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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 270

THE HENRIETTA MILLS, PETITIONER,

vs.

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, AND W. C. HARDIN, SHERIFF

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,401)

(34,401)

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[fol. 3]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE DIVISION

Equity. No. —

THE HENRIETTA MILLS, Complainant,

against

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, and W. C. HARDIN, Sheriff of Rutherford County, Defendants

BILL OF COMPLAINT—Filed Apr. 17, 1928

[fol. 4] To the Honorable Edwin Y. Webb, Judge of the District Court of the United States for the Western District of North Carolina:

Comes now the Henrietta Mills, a corporation under the laws of the State of North Carolina, and brings this its bill against Rutherford County, a municipal corporation under the laws of North Carolina, and W. C. Hardin, Sheriff of Rutherford County, in the District Court of the United States for the Western District of the State of North Carolina.

And thereupon complainant complains and alleges:

I

That the Henrietta Mills, the complainant herein, is a corporation duly organized and incorporated under the laws of the State of North Carolina, with its principal place of business at Caroleen, Rutherford County (in said state), and is the owner of a cotton mill and equipment situated at Caroleen, in said County.

II

That Rutherford County, in the State of North Carolina, the defendant herein, is a municipal corporation under the laws of the State of North Carolina, and that W. C. Hardin is Sheriff and tax collector of said County.

III

This is a suit in equity and arises under the constitution and laws of the United States, as will presently more fully appear, and is primarily for injunctive relief, and the amount in controversy, exclusive of interest and costs as will hereinafter be specifically shown exceed the sum and value of $3,000.00. The complainant brings this suit to restrain the defendant from levying, assessing and collecting certain taxes attempted to be levied, assessed and collected against the complainant and its property in Rutherford County, North Carolina. The complainant respect- [fol. 5] fully shows that unless the defendants and both of them be restrained from enforcing collection of said taxes, it will be deprived of privileges and immunities guaranteed and secured to it by the constitution of the United States and the Fourteenth Amendment thereof; and further, that it will be deprived of its property without due process of law and will likewise be denied the equal protection of the law, in contravention of the Constitution of the United States and the Fourteenth Amendment thereof; that the taxes sought to be collected by the defendants are computed upon an arbitrary appraisal and valuation that constitutes an unjust and unfair discrimination against the complainant.

IV

That it is provided in and by the terms of sections 47 and 48 of the 1927 Machinery Act of the State of North Carolina, being Chapter 71 of the 1927 Public Laws of North Carolina, that all taxes shall be levied and assessed at the true value in money and/or market value of property within the State of North Carolina on the first day of May in each calendar year.

V

That the actual value in money and/or true and market value of all of the property of complainant situated in said Rutherford County, in the State of North Carolina, did not on the first day of May, 1927, exceed $1,887,352.

VI

That complainant duly listed its property with the list takers and assessing officers as, when and in the manner provided by the laws of North Carolina, and listed its real estate and personal property in segregated amounts, which aggregated the amount above specified; that the list takers and assessing officers wrongfully and without notice to complainant purported to raise the 1927 value of complainant's personal property from $513,584, to $1,264,051, and thereafter wrongfully contended that the 1927 value of the real estate of complainant was increased from $1,373,768, to [fol. 6] $2,124,235, and that said purported changes in said 1927 listing and valuations for assessment purposes were purported to be made in accordance with a notice given by said list takers and/or assessing officers, as follows: to wit:

"Rutherfordton, Rutherford County.

"We, the undersigned, George Biggerstaff, Z. O. Jenkins and C. F. Geer, County Supervisors for Rutherford County, G. O. Holland, Wister Bridges and R. E. Walls, Assistant Assessors for High Sholes Township, respectfully find that the attached abstract of the Henrietta Mills Inc. should be amended and changed so that in the abstract of Real Estate the following values will appear:

"1,047½ Acres land	56,575
Machinery, Buildings, Tenement Houses	1,317,193
	1,373,768

"And that the aggregate value of Real and Personal Property shown on said abstract shall be accordingly increased, so that the total shown by said abstract will be, of May 1, 1927, 2,637,819.

"And we do respectfully certify the foregoing as a part and parcel of said abstract.

This the 2 day of July, 1927.

"George Biggerstaff, County Supervisors. Z. O. Jenkins, County Supervisors. C. F. Geer, County Supervisors. G. O. Holland, Assistant Assessors for High Sholes Township. R. E. Wall, Assistant Assessors for High Sholes Township. Wister Bridges, Assistant Assessors of High Sholes Township."

[fol. 7] VII

That in due course, to wit, on or about the 18th day of July, 1927, complainant filed with the County Commissioners as a Board of Equalization of said Rutherford County, objections to said purported changes in valuations, in words and figures as follows, to wit:

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF RUTHERFORD

"In the Matter of the Listing, Assessment and Taxation of the HENRIETTA MILLS for the Year 1927

"To the County Supervisors of Rutherford County, North Carolina:

"The Henrietta Mills respectfully complains of the valuation for taxation of its property for the year 1927 in the following respects, to wit:

"I. That the purported valuation fixed for personal property is $1,264,051, that is, the difference between $2,637,819, mentioned in your letter of July 2, 1927, and $1,373,768, set forth in the list of The Henrietta Mills, dated April 2, 1927, under Item No. 1, (being land, machinery, buildings, tenements, etc.) is arbitrary, greatly excessive, unreasonable and not in accordance with the actual, true, cash or market value, or value in money, of the personal property, as shown by Items 11 to 82 inclusive of the list of the taxpayer (The Henrietta Mills) dated April 2, 1927.

"II. That the purported valuation and any assessment of personal property covered by Items 11 to 82, inclusive,

at $1,264,051, is arbitrary, excessive, unreasonable, unjust and illegal to the extent that it exceeds $513,584, and to said extent exceeds the actual, true, cash and/or market value, and/or value in money of said property.

"III. That the listing furnished by The Henrietta Mills to the Tax Lister and said Board truly sets forth the actual, true, cash and/or market value and value in money of per- [fol. 8] sonal property, as shown by Items 11 to 82 inclusive of the said list of The Henrietta Mills, and any valuation and/or assessment in excess of the aggregate of such valuations, to wit: $513,584, is illegal under the Constitution and Laws of the State of North Carolina and the Federal Constitution, and any assessment in excess of said sum of $513,584, would be a taking of the property of The Henrietta Mills without due process of law and not an assessment or fixing of valuations on the basis of other property in said County of Rutherford, and not an equal protection under the laws, and contrary to the provisions of the Constitution of the United States, and particularly Article V, and Sec. 1 of Article XIV, of the Amendments to said Constitution.

"IV. That the valuation and/or assessment of the personal property, as shown by Items 11 to 82 inclusive of the said list of The Henrietta Mills, at any valuation in excess of that contained in the said list furnished by the Henrietta Mills to the Listing Officer and this Board, to wit: the sum of $513,584, would be a valuation and assessment in excess of the fair, actual, true, cash and/or market value or value in money of said personal property (as shown by Items 11 to 82 inclusive of the said list) and to the extent of such excess would be unequal taxation and unequal protection of law and would be taxation at a much higher rate and valuation than for other property of the taxpayer in the said County of Rutherford, State of North Carolina, and would result in and be an arbitrary assessment of the property of The Henrietta Mills at such excessive sums and amounts as hereinbefore stated.

Dated July 18, 1927.

"The Henrietta Mills, By (Signed) H. M. Stephens.
H. M. Stephens, Agent and Attorney."

VIII

That thereafter, to wit, on the 29th day of July, 1927, complainant filed with the County Commissioners as a Board of Equalization of said Rutherford County another [fol. 9] and additional complaint and application for reassessment in compliance with and in accordance to provisions of Section 109 of the 1927 Machinery Act of the State of North Carolina, being Chapter 71 of the 1927 Public Laws, which was accompanied by a letter of that date, both of which, in words and figures were as follows, to wit:

"The Board of County Commissioners, Rutherford County:

"The Henrietta Mills make application for reassessment of its real and personal property hereafter described, for the reason that the said property is now assessed in excess of its actual value on the first day of May, of the current year, and do hereby certify that in our best judgment the actual value of said property on that day was as stated in the petition and complaint filed with your Board on July 18, 1927, which petition and complaint the Henrietta Mills asks be considered as a part of this application.

"The location of the said Henrietta Mills is at Henrietta in Rutherford County, North Carolina.

"That as to the assessed value, and as to the actual value on May 1, 1927, that these values are set forth in the said petition and complaint filed on July 18, 1927 and the Henrietta Mills asks that the said petition and complaint be considered a part of this application for the purpose of showing the assessed value and the actual value as of May 1, 1927.

"The Henrietta Mills, by Smith & Joyner, Attorneys.

"July 29, 1927.

"Mr. W. O. Geer, Clerk Board of County Commissioners and Board of Equalization and Review, Rutherford County, Rutherfordton, N. C.

"Dear Sir: On behalf of our client, the Henrietta Mills, [fol. 10] we beg to hand you application for reassessment of the property of the Henrietta Mills located in Rutherford

County. We understand that a complaint and petition has already been filed as of July 18, 1927 which was signed in the name of the Henrietta Mills by Mr. H. M. Stephens, Agent and Attorney. We are filing this application to accompany the petition and complaint filed on the 18th inst. for the purpose of complying with the statute, if it should appear that it has not already been fully complied with by the Company. We understand that Mr. Frayser Jones, representing the Henrietta Mills, has had the matter up with your Board but he is not available for a conference today, therefore, we are not certain as to what form of application he may have filed other than the petition of the 18th.

"Section 110 of the Machinery Act provides for filing a written notice in 10 days after final action by the Board of County Commissioners. At this time we do not know as to whether or not your Board has taken final action, nevertheless, we are handing you a notice of appeal to the State Board of Assessment and we are asking that the said petition of July 18, 1927 be considered as a part of the within notice of appeal.

"We think that our client has complied with all of the provisions of the law but if it appears to you that such is not the case, will you please do us the courtesy of wiring us the first thing Saturday morning. If it should appear that anything remains to be done to protect our client's interests, we would thank you to grant us a sufficient extension of time for that purpose.

"Yours very truly, Smith & Joyner."

IX

That the County Commissioners of Rutherford County as a Board of Equalization for the year 1927, declined and refused and continue to decline and refuse to hear, consider, pass upon or determine the questions presented by said objections and complaints filed with said Board of Equalization as aforesaid, and no final or other action was ever taken by the County Commissioners of Rutherford [fol. 11] County as a Board of Equalization as to or upon the said complaints or either of them so filed by complainant with the County Commissioners as a Board of Equalization as aforesaid.

X

That section 108 of Chapter 71, Public Laws of North Carolina, 1927 being the Machinery Act, provides for a Board of Equalization and Review, and that said Board shall meet on the second Monday in July after having first given ten days notice by publication of such meeting. That said section is as follows:

"The board of county commissioners shall constitute the Board of Equalization and Review. On the second Monday in July, said board of commissioners shall meet, first giving ten days notice by publication for the purpose of equalizing the valuation so that each tract or parcel of land shall be entered on the tax list at its true value in money. To this end, they shall adopt the means and methods heretofore pointed out in this act in section fifty hereof. In counties in which there is an auditor, tax clerk or other similar official, such official shall be the clerk of the equalization board. In counties having no such official, the clerk of the board of commissioners shall be the clerk of the equalization board. The county supervisor shall meet with the board of county commissioners when they sit as a board of equalization and review, and shall give such information as he can with respect to valuation of property for taxation in the county, but shall have no vote."

That the complainant herein has been informed that the Board of County Commissioners did not comply with the provisions of the above mentioned section of the law and that the said Board did not meet as a Board of Equalization and Review as provided for by law. That immediately after this controversy arose complainant sent one of its employees and representatives to look over the records of the county commissioners and after a diligent search of all of the records that could possibly contain any record or minutes of the board of commissioners sitting as an equali- [fol. 12] zation board complainant was unable to locate any such record or minutes, and was advised by officials and employees of the county that no meeting was held by the Board of County Commissioners sitting as a Board of Equalization and Review on the second Monday in July as provided by law. That a careful examination of the min-

utes of the board failed to reveal any record of any meeting on said day and also failed to reveal any record of any equalization order having been made as provided for by law.

XI

That on the 29th day of July, 1927 and before the expiration of ninety days after final or any action taken by the County Commissioners as a Board of Equalization, complainant duly complained and appealed to the State Board of Assessment from action and inaction on the part of said County Commissioners and Board of Equalization with reference to the purported 1927 assessment on the property of complainant, and the purported fixing of the value of complainant's property for the year 1927 and subsequent years.

XII

That after consideration of said complaint and appeal by and before the said State Board of Assessment, said State Board of Assessment purported to fix the value on the real estate of complainant at $1,849,235 and personal property at $513,584, aggregating $2,362,819, although the actual market, fair, true and/or cash value of all the property of complainant in the County of Rutherford in the State of North Carolina, on the first day of May, 1927, did not in the aggregate exceed said sum of $1,887,352. That the said State Board of Assessment in fixing or purporting to fix the value of the property of complainant as of May 1st, 1927, did so arbitrarily, intentionally, systematically, wrongfully and without any evidence to warrant its action.

XIII

That at the hearing before the State Board of Assessment very little time was allowed complainant within which to set [fol. 13] forth its contentions with respect to the valuation that had been placed on its property. That complainant offered in evidence the testimony and affidavits of various persons who qualified as experts in the valuation and appraisal of cotton mill properties; that in addition to the testimony which was offered by complainant and by the county of Rutherford complainant moved the State Board

of Assessment to order an appraisal of the property of the complainant and complainant contended that it was entitled to have an appraisal made on the order of the State Board of Assessment by some fair disinterested appraiser who was qualified to properly appraise the property of the complainant. That the said State Board of Assessment refused to have an appraisal made and refused to allow a continuance of the hearing until the complainant could itself have another appraisal made by an appraiser who had theretofore been representing various counties in North Carolina in the appraisal of cotton mill property. That complainant even went so far as to suggest that if the State Board of Assessment would have an appraisal made by a competent, disinterested appraiser that then the complainant would pay the expenses of such appraisal after the defendant County had refused to join in an appraisal at the joint expense of the complainant and the defendant County. That thereupon the complainant excepted to all of the actions and inactions on the part of the State Board of Assessment.

XIV

That the tax listing officers and assessing officers and the County officers and Board of Equalization of Rutherford County, each and all of them intentionally and arbitrarily purported to fix the value of the property of the complainant greatly in excess of its actual, true, fair, market, real and/or cash value on May 1, 1927.

XV

That the tax listing officers, assessing officers, County Commissioners as a Board of Equalization of Rutherford County, and State Board of Assessment, and each of them, [fol. 14] wrongfully, intentionally, systematically and arbitrarily fixed or allowed to be fixed as of May 1, 1927, the assessed values of practically the whole of the assessable property in Rutherford County at 60% of the actual, true, cash and/or market value thereof; that is, the aggregate of all taxes in said Rutherford County is based upon 60% of the aggregate of the fair, market, real and/or true value in money of all property in said County, and practically all property in Rutherford County other than that of com-

plainant has been assessed at 60% of its fair, true and/or market value, whereas the property of complainant has been valued and purported to be assessed (as of May 1, 1927) at more than 100% of its true, cash and/or market value and should be reduced to 60% of its actual value for assessment and tax purposes, that is, to the sum of $1,132,-411.20, and any purported assessment or levy for 1927 or any subsequent year upon the property of complainant in the County of Rutherford in excess of said sum of $1,132,-411.20 is excessive, arbitrary and intentionally and systematically a taking of complainant's property contrary to the provisions of the Constitution of the United States and thereby illegal and void.

XVI

That complainant is informed and believes that the tax listing officers, assessing officers, County Board of Equalization in all the counties of North Carolina have intentionally and systematically adopted for assessing purposes a basis of 60% of the actual, true, cash and/or market value of practically all the property in the State of North Carolina, and is informed and believes that the State Board of Assessment has approved and permitted said 60% basis to become effective generally all over the State of North Carolina, save and except as to the property of complainant.

XVII

That complainant has paid to the defendant, Rutherford County, through its sheriff and tax collector, the defendant W. C. Hardin, the sum of $26,89[illegible].77, which is equal to the tax rate and levy fixed by the officers of Rutherford County, [fol. 15] to-wit: a Board of County Commissioners, upon a valuation of $1,132,411.20, which valuation is sixty per cent of the actual, true, fair, market, and/or value in money of the property of the complainant in said Rutherford County on May 1, 1927; that this amount has been paid without prejudice to the rights either of the plaintiff or the County of Rutherford, the complainant contending that said amount should constitute a payment in full for all taxes due by it to the County of Rutherford for the year 1927 and the defendants contending that there should be paid

an additional sum of $29,222.19, which amount the said defendants contend constitutes a lien on the property of the complainant in said Rutherford County.

XVIII

That complainant is advised and verily believes that the assessment of its property for the year 1927 in excess of 60% of the fair, cash, true and/or market value of its property is illegal, unlawful and contrary to the Constitution of the United States, and that to enforce the tax and/or assessment as made and claimed by said Rutherford County would be a taking of complainant's property without due process of law and deny to complainant equal protection of the law, and thereby there is herein presented a Federal question over which this Court has jurisdiction, and that complainant is advised and believes that enforcement of said tax and/or assessment upon or against complainant's property in Rutherford County for the year 1927 or any subsequent year in excess of 60% of the fair, true, cash and/or market value of its property in Rutherford County would be and is in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States, and would result in taking the property of complainant without due process of law and deny to it equal protection of the law.

XIX

That unless restrained and enjoined by appropriate and proper order of this Court entered within a reasonable time after the filing of this bill of complaint, defendant, Rutherford County, by and through its officers and agents [fol. 16] will attempt to sell and dispose of the property of said complainant in Rutherford County, North Carolina, to satisfy said illegal assessment and tax.

XX

That under the laws of the State of North Carolina (of which this court takes judicial notice) and under the Constitution of the United States and Amendments thereto, the laws of the United States and decisions of the United States Courts, complainant is entitled to have and maintain

a suit in equity against the defendants for injunctive relief and only in a court of equity can adequate relief be had, and complainant verily believes and alleges that it does not have any adequate remedy at law.

Wherefore complainant prays:

(1) That defendant, its officers, agents, attorneys and employees be enjoined and restrained from collecting or attempting to collect any tax, sum or amount whatsoever from complainant or to enforce same against its property for any claim for taxes for the year 1927 or any subsequent year based upon any valuation in excess of $1,132,411.20 which is 60% per cent of the actual, true, fair, market and/or value in money of the property of complainant in said Rutherford County on May 1st, 1927, and the tax upon which has been paid by complainant as hereinabove set forth.

(2) For complainant's costs and disbursements herein, and interest as provided by law.

(3) For such other further and general relief as may be meet, equitable and proper in the premises.

Willis Smith, Smith & Joyner, Attorneys and Solicitors for Complainant. Address: Citizens National Bank Building, Raleigh, North Carolina.

[fol. 17] *Duly sworn to by G. I. Davenport. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed April 18, 1928

Comes now the above named plaintiff and shows the Court:

[fol. 18] That it has instituted in this Court by bill of complaint an action against Rutherford County, in the State of North Carolina, and W. C. Hardin, the Sheriff of Rutherford County, the object and purpose of the action being to secure from this Honorable Court an order injoining

preliminarily and perpetually the defendants from collecting or attempting to collect certain taxes on an illegal and invalid assessment on the property of the plaintiff and from enforcing, or attempting to enforce, said illegal assessment against the property of the plaintiff. The bill filed herein alleges and sets forth the grounds of unconstitutionality of the assessment under which said illegal taxes have been computed and under which illegal assessment taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out and explained in the bill of complaint filed herein.

Plaintiff alleges that the property of all other taxpayers has been assessed at sixty per cent of its actual, true, fair, market and/or value in money, whereas the property of the plaintiff has been assessed at more than one hundred per cent of its actual, true, fair, market and/or value in money.

The said alleged illegal tax is now past due and payable and plaintiff has received notice from the defendant, Sheriff of the defendant, Rutherford County, that property of the plaintiff will be advertised and sold unless said illegal taxes are paid. The plaintiff has heretofore paid to the defendants such amount of tax as it concedes to be due.

The said taxes which have been levied upon said illegal assessment will be collected by the defendants by a sale of plaintiff's property prior to the determination of this cause, unless the defendants are restrained.

Wherefore application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call for his assistance to hear and determine this application two other Judges, and that the statutory notice of the hearing of this [fol. 19] application be given to the defendants, and an order issued requiring the defendants to show cause at the time and place to be fixed by this Court according to law, why said interlocutory injunction should not issue as prayed for. This application is based upon the verified bill of complaint filed herein.

Willis Smith, Attorney for Complainants.

IN UNITED STATES DISTRICT COURT

ANSWER—Filed May 8, 1928

The Answer of Rutherford County and W. C. Hardin, Sheriff of Rutherford County, the above named defendants, to the Bill of Complaint exhibited against them by the above named complainant.

The defendants now and at all times hereafter saving and insufficiencies in the complainant's said bill of comfits and advantages of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such part thereof as the defendants are advised that it is material or necessary for them to make answer unto, answering, say:

1. Defendants admit that complainant is a corporation duly organized and incorporated under the laws of the State of North Carolina with its principal place of business in Caroleen, Rutherford County, in said State and is the owner of a cotton mill and equipment situated at Caroleen in said County. Defendants further allege that complainant also owns a valuable cotton mill situated at the Town of Henrietta in Rutherford County, North Carolina.

2. Defendants further admit that Rutherford County in the State of North Carolina, one of the defendants herein, is a municipal corporation under the laws of the [fol. 20] State of North Carolina and that W. C. Hardin is Sheriff and Tax Collector in said County.

3. Answering paragraph III of complainant's bill, defendants admit that the amount in controversy, exclusive of interest and costs, exceeds the value of $3,000.00. Defendants, however, specifically deny the allegations in paragraph III of complainant's bill herein which allege "that unless the defendants and both of them be restrained from enforcing collection of said taxes it will be deprived of privileges and immunities guaranteed and secured to it by the Constitution of the United States and the Fourteenth Amendment thereof." De-

fendants also specifically deny that the complainant has been or will be deprived of its property without due process of law nor will it be or has it been denied the equal protection of the law in contravention of the Constitution of the United States and the Fourteenth Amendment thereof. Defendants also specifically deny that the taxes sought to be collected by the defendants are computed upon an arbitrary appraisal and valuation that constitutes an unjust and unfair discrimination against the complainant as alleged by the complainant in said paragraph III.

4. The allegations of paragraph IV of complainant's bill are admitted.

5. The allegation of paragraph V of complainant's bill is untrue and is therefore denied.

6. The allegations contained in paragraph VI of complainant's bill as therein stated are untrue, misleading and are therefore denied. Defendants aver the facts to be as follows: That on or about the 3rd day of June, 1927, The Henrietta Mills caused to be prepared on a blank for listing real and personal property a statement of the real and personal property owned by said Corporation in Rutherford County and without consultation or agreement with the duly constituted and lawful list-takers for High Shoals Township of said County in which said property was situated, said Corporation entered for taxation for the year 1927 on said return their real estate, machinery, buildings and tenements at a [fol. 21] grossly inadequate valuation and did then and there attempt to fix the valuation of $1,373,768.00 on said property, which was $807,032.00 less than the valuation at which the same property had been theretofore for many years past listed by the said Corporation as its true value for taxation and accepted by the list-takers and assessors of previous years as such true value. That said Corporation also listed on said return its personal property, including true cash value of merchandise, true and actual value of all manufactured articles, true and actual value of all articles in process of manufacture, stone, brick, lumber, building material and so

forth, office furniture, trucks, automobiles and so forth, at a valuation of $513,584.00.

That said Henrietta Mills by its Treasurer, A. R. Mitchell, caused said tax return to be sworn to and acknowledged before one Pearce M. Perry, a notary public, after which the same was forwarded to the list takers and assessors of Rutherford County as and for the true tax return of said The Henrietta Mills on its property in Rutherford County for the year 1927.

That the duly constituted list-takers and assessors for Rutherford County upon receipt of said tax return investigated and inspected the property of The Henrietta Mills and the County records affecting said property and interviewed persons familiar therewith, thereby discovering the gross undervaluation of the real estate, buildings, machinery and tenements made by The Henrietta Mills on said return and thereupon fixed and assessed the value of said real estate, machinery, buildings and tenements as follows: 1,047½ acres of real estate $56,575.00, machinery, buildings, tenements and so forth $2,067,660.00, making a total valuation for taxation for said real estate, machinery, buildings and tenements of the sum of $2,124,235.00. That said tax assessors did not in any manner change on said tax return the personal property listed by The Henrietta Mills at the value of $513,584.00, but allowed said valuation to remain unchanged; that the action of said township list-takers and assessors was considered, passed upon and approved at a joint meeting of the Board of Supervisors for Rutherford County and the township assessors for Rutherford [fol. 22] County on the 2nd day of July, 1927, and a copy of said amended return as re-valued and increased by the list-takers with the approval of the Board of Supervisors for Rutherford County was immediately returned by special delivery mail to The Henrietta Mills at its Post-office address in Caroleen, North Carolina, and was delivered to said The Henrietta Mills by the Postmaster at Caroleen on July 3rd, 1927; that accompanying said amended return of said The Henrietta Mills attached thereto was the letter set out by the complainant in paragraph VI of the complainant's bill; that while the phraseology of the

letter is somewhat ambiguous, when considered with the amended abstract or tax return which was attached thereto, it was impossible for The Henrietta Mills to have misunderstood the changes which were made in said tax return.

That on the 11th day of July, 1927, the Board of Commissioners for Rutherford County convened in Rutherfor County as an Equalization Board; the Board of Supervisors composed of George Biggerstaff, Z. O. Jenkins and C. F. Geer sitting with them, and heard complaints, beginning on the 11th day of July, 1927, and ending on the 15th day of July, 1927, during said time passing upon and equalizing and disposing of some seventy cases, and that at said meeting said Board of Commissioners and Board of Equalization adopted the valuations for taxation of the tax assessors and County Board of Supervisors of Rutherford County on all property assessed for taxation in Rutherford County with the exception of the seventy cases hereinabove referred to; that at no time between the dates of the notification of The Henrietta Mills and the amending of its tax return and the date of the completion of the work of the Board of Equalization for Rutherford County on July 15th when said hearings were terminated and adjourned did The Henrietta Mills object or make application to any county officer to be heard as to any complaint arising out of the action of the township list-takers and assessors and the Board of Supervisors in increasing the value for taxation of its property to $2,124,235.00 which was $56,575.00 less than the amount at which said Corporation had valued and paid taxes on the same for many years past.

That the property of The Henrietta Mills was thereupon [fol. 23] listed for taxation on the tax lists of Rutherford County as follows: Real estate $56,575.00; machinery, buildings, tenements and houses $2,067,660.00; personal property $513,584.00, making a grand total of all property for taxation $2,637,819.00; that said permanent tax lists of Rutherford County were completed and available for inspection and examination by the public early in the month of August, 1927, and defendants are advised, informed and believe that the agents and servants of The Henrietta Mills, as well as one or more of their attorneys, have on many occasions since the completion of

said permanent tax lists examined and inspected said permanent tax lists of Rutherford County and that said complainant well knew at the time it received said notice of the amendment of said return that said tax return was amended only with reference to the value of the real estate, machinery, buildings, tenements and houses, and that no change was made in the value of the personal property as shown on said return.

7. It is admitted that on or about the 18th day of July, 1927, the complainant filed with a member of the Board of Commissioners for Rutherford County the statement appearing in paragraph VII of complainant's bill; it is denied, however, that said statement was filed with the Board of Commissioners as a Board of Equilization for the simple reason that the Board of Equilization for Rutherford County had prior to that time completed its deliberations and adjourned. It is also alleged by the defendants that upon the presentation of said statement that the complainant through its agents and servants was thoroughly apprised of the fact that the only changes which had been made in the tax return of The Henrietta Mills were the changes specifically described in paragraph 6 of defendants' answer and that no change in the valuation of the personal property of The Henrietta Mills (listed at an aggregate valuation on said return of $513,584.00) had been made by the tax listing authorities of Rutherford County. It is further alleged that the agents and servants of The Henrietta Mills were advised of the fact that the Board of Equilization had adjourned that they had been given due and ample notice of the changes made in the return of The Henrietta Mills and that said application for considera-[fol. 24] tion of the valuation of The Henrietta Mills was received too late to be acted on by the Equalization Board.

8. It is admitted that on or about the 29th day of July, 1927, complainant filed with a member of the Board of Commissioners of Rutherford County the additional complaint and application for reassessment of its property, said notice and the letter accompanying same being copied in paragraph VIII of complainants bill. Defendants deny, however, that said County Commissioners had authority to act on said application at that late date, the provisions

of Section 109, Chapter 71, of the Machinery Act of 1927 providing that action in such cases should be taken by the Board of Commissioners not later than the 15th day of July. All the other allegations of paragraph VIII of complainant's bill are denied.

9. It is denied that the Commissioners of Rutherford County ever as a Board of Equalization declined or refused to consider, pass upon, hear or determine the questions presented by said objections and complaints set out in paragraph VIII of complainant's bill. It is further denied that said objections and complaints were filed with the Board of Equalization because said Board of Equalization had adjourned before the complaints were received. It is admitted that no final or other action was ever taken by the Board of Commissioners for Rutherford County as a Board of Equalization as to or upon the said complants or either of them so filed by complainant with the County Commissioners, but it is denied that said complaints were filed with the Board of Equalization for Rutherford County. The defendants allege that the facts in reference to the matters and things alleged in paragraph IX of complainant's bill are fully answered in the answer to paragraph VIII of said bill.

10. It is admitted that Section 108, Chapter 71, of the public laws of North Carolina, 1927, is correctly quoted in paragraph X of complainant's bill.

The allegation contained in paragraph X of complainant's bill "that the Board of County Commissioners did not comply with the provisions of the above mentioned section of the law and that said Board did not meet as a Board [fol. 25] of Equalization and Review as provided by law" is untrue and is therefore denied.

As to that portion of paragraph X of complainant's bill in which complainant avers that "immediately after this controversy arose complainant sent one of its employees and representatives to look over the records of the County Commissioners and after a diligent search of all the records that could possibly contain any records or minutes of the Board of Commissioners sitting as an equalization board complainant was unable to locate any such record or minutes, and was advised by officials and employees of the

County that no meeting was held by the Board of County Commissioners sitting as a Board of Equalization and Review on the second Monday in July as provided by law" and "that a careful examination of the minutes of the Board failed to reveal any record of any meeting on said day and also failed to reveal any record of any equalization order having been made as provided by law," the defendants aver that they have not sufficient information to affirm or deny as to whether or not complainant sent a representative to investigate the records of the County Commissioners as to the meeting and deliberation of the Board of Equalization for Rutherford County and do not know as to what search the representative of complainant made to ascertain about these matters; however, the defendants aver and allege that said Board of Equilization and Review did convene on the 11th day of July (which was the second Monday in July) and did continue the hearing and meeting of said Board from day to day until the 15th day of July, 1927, That a record of the proceeding had by this Board was duly and carefully taken by the Secretary to the Board, who was a stenographer, and that shortly thereafter, the exact date of which is unknown to the defendants, these proceedings were duly written upon the minutes of the meeting of the Board of Commissioners for Rutherford County as will appear by reference to pages 92-A and 92-B of Minute Book 10 of said Board of Commissioners and duly and regularly signed by W. G. Harris, Chairman of said Board, and that after the adjournment of the said Board it caused to be furnished to the State Board of Assessment a copy of all proceedings of the County Board of Equalization with respect to any and all changes made by such Board of valuations made and re-[fol. 26] turned by the township list-takers and assessors; and the Clerk of said Board also furnished the State Board of Assessors on blanks furnished by the Board a statement from the returns made by the township list-takers and assessors of aggregate value of real and personal property by townships and as a whole for the County and as average value per unit of land acreage and of the several classes of livestock, said statement and reports having been made in the compliance with Section 50, Chapter 71, of the Public Laws of 1927.

Defendants attach to this Answer a copy of the notice of the meeting of the Board of Equalization and Review of Rutherford County which was duly published in "The Forest City Courier," a newspaper having general circulation in Rutherford County, for more than Ten days prior to the said meeting, said notice being marked "Exhibit A" and prayed to be considered a part of this Answer.

Defendants also attach to this Answer a certified copy of the minutes of the proceedings had before the Board of Equalization and Review, the same being marked "Exhibit B" and prayed to be considered a part and parcel of this answer.

The defendants further allege that the complainant did not and could not have made an exhaustive inquiry in its effort to obtain a record of the minutes of the meeting of the Board of Equalization which convened on July 11th because of the fact that complainant's representatives failed to make inquiry from any member of the Board of Commissioners of Rutherford County or of the Secretary to said Board, any one of whom would have been glad to furnish it with all the data in reference thereto.

All the other allegations of paragraph X of complainant's bills as therein stated are untrue and denied.

11. Answering paragraph XI of complainant's bill, defendants aver that on or about July 29th, 1927, the Board of Commissioners for Rutherford County received from Messrs. Smith & Joyner, attorneys for the complainant, the following notice:

[fol. 27] "In the Matter of the Appeal from the County Commissioners, Constituting the Board of Equalization and Review, to the State Board of Assessment, Involving the Assessment and taxation of the HENRIETTA MILLS

To the Board of County Commissioners of Rutherford County, Rutherford, N. C.:

Please take notice that The Henrietta Mills appeals or will appeal from any order of the Board of County Commissioners of Rutherford County assessing the property of The Henrietta Mills at any valuation higher than the valuation which The Henrietta Mills contends is a true and fair valuation as set forth in the written petition and

complaint filed with your Board on July 18th, 1927, which petition and complaint The Henrietta Mills asks be considered as a part of this notice, and be taken as a statement of the grounds for appeal.

This the 29th day of July, 1927.

The Henrietta Mills, by Smith & Joyner, Attorneys."

July 29th, 1927.

All the other allegations of paragraph XI of complainant's bill not hereinabove admitted are denied.

12. It is admitted that the State Board of Assessment, which Board by Article 2, Chapter 71, Public Laws of 1927, is given general supervision of the system of taxation throughout the State and which said Board acting under the provisions of Section 5 (subsection 3) of Article 2 of said Chapter 71 of the Public Laws of 1927, heard the appeal of The Henrietta Mills in which said The Henrietta Mills alleged over-valuation for taxation of its properties in Rutherford County, did after said hearing which was held on the 19th day of October, 1927, fix the value of the real estate, machinery, buildings, tenements and houses of [fol. 28] The Henrietta Mills for taxation at the sum of $1,849,235.00, thereby reducing the valuation placed thereon by the tax assessors of Rutherford County by the sum of $275,000.00. At the date of this hearing The Henrietta Mills by its attorney, Willis Smith, admitted to the State Board of Assessment that there was no controversy existing between The Henrietta Mills and the taxing authorities of Rutherford County as to the valuation of personal property listed on said return by The Henrietta Mills and acquiesced in by the taxing authorities of Rutherford County at the sum of $513,584.00. The attorneys for Rutherford County also agreed that there was no controversy with reference to the valuation of said personal property and the State Board of Assessment then ordered that there would only be considered on said appeal matters tending to establish the correct valuation of the real estate, machinery, buildings, tenements and houses of said Company situated in Rutherford County. These defendants specifically deny that the State Board of Assessment in arriving at said valuation did so arbitrarily and wrong-

fully and without any evidence to warrant its action. On the other hand, these defendants allege that The Henrietta Mills was represented at said hearing by very able counsel and by experts and by persons whom they claimed to have expert knowledge as to the valuation of mill properties and machinery; that The Henrietta Mills introduced and read at that hearing a large number of affidavits in which they attempted to prove their contention as to the value of their real estate, machinery, buildings, tenements and houses in Rutherford County; that in addition thereto they placed in evidence before said State Board of Assessment a voluminous appraisal which The Henrietta Mills had caused to be made of its property, said appraisal consisting of a hundred or more typewritten pages;

Likewise Rutherford County read before said State Board of Assessment as evidence in its behalf affidavits of a large number of representative citizens of Rutherford County, including tax assessors, supervisors and commissioners of Rutherford County for the year 1927 tending to show that the valuation placed by the taxing authorities of Rutherford County on the real estate, machinery, build-
[fol. 29] ings, tenements and houses of The Henrietta Mills was a fair valuation of said property for taxation and that its property had not been taxed at a higher valuation or percentage of its actual value than the property of the other citizens of Rutherford County.

That the State Board of Assessment, after having carefully considered a very large number of affidavits and having heard the testimony of witnesses adduced before it and after having listened to the arguments of counsel, took these matters in controversy under advisement for further deliberation and several days thereafter rendered their decision in which they reduced the value of the real estate, machinery, buildings, tenements and houses of The Henrietta Mills situated in Rutherford County for taxation for the year 1927 from the aggregate value of $2,124,-235.00 to an aggregate valuation of $1,849,235.00. Said State Board of Assessment did not attempt to change the valuation of the personal property of The Henrietta Mills, but left the same at the sum of $513,584.00 because of the fact that the attorneys for The Henrietta Mills and the attorneys for the County of Rutherford had agreed and stated at said hearing before the State Board of Assess-

ment that the valuation of said personal property was not in dispute, and an order to that effect was made upon the minutes of said meeting.

All the other allegations of paragraph XII of complainant's bill as therein stated are untrue and are therefore denied.

13. Answering paragraph XIII of complainant's bill, these defendants aver that ample time was allowed complainant within which to set forth its contentions with respect to the valuation that had been placed upon its property. They admit that the complainant offered in evidence the testimony and affidavits of various persons who qualified as experts in the valuation and appraisal of cotton mill properties. Defendants further allege that complainant submitted to the State Board of Assessment a voluminous appraisal of its property which it claimed had been carefully made by experts and which was evidently favorable to the contentions of the complainant.

It is admitted that at said hearing the complainant made a motion that still another appraisal of this property be made by experts, which motion was resisted by the attor- [fol. 30] neys for the County of Rutherford on the grounds of the great cost of procuring experts to undertake this work and on the further ground that there was ample evidence before the Board of Assessment from which to ascertain the fair value of said property for taxation. All the other allegations of paragraph XIII of complainant's bill as therein stated are untrue and are therefore denied.

14. The allegations of paragraph XIV of complainant's bill as therein stated are untrue and are therefore denied.

15. That the allegations of paragraph XV of complainant's bill and each and every one of them as therein stated are untrue and are therefore denied.

16. As to the allegations of paragraph XVI of complainant's bill, the defendants aver that they have no knowledge as to the actions of tax listing officers, assessing officers, county boards of equalization and like officers in counties of North Carolina other than that of Rutherford County, but in so far as the allegations of said paragraph XVI are intended to apply to the tax listing officers, assessing officers and county boards of equalization of Ruther-

ford County and the State Board of Assessment of North Carolina said allegations are untrue and are therefore denied. It is further alleged that under the laws of the State of North Carolina each county in an individual taxing unit with relation to the valuation, assessment for taxation and collection of ad valorem taxes and that the valuation of property for taxation in the counties of North Carolina other than Rutherford County have no bearing upon the matters of controversy in this cause.

17. It is admitted that the complainant has paid to W. C. Hardin, Sheriff of Rutherford County, the sum of $26,-894.77 which was received by said Sheriff to apply on the taxes due by the complainant to Rutherford County for the year 1927, and that said amount was paid without prejudice to the rights of the complainant or the County of Rutherford, the complainant contending that said amount constituted payment in full for all taxes due by it to the County [fol. 31] of Rutherford for the year 1927, and the defendants contending that the total amount of tax which was due by The Henrietta Mills to Rutherford County on the date of said payment, to-wit, February 29th, 1928, was the sum of $56,116.96. All the other allegations of paragraph XVII of complainant's bill as therein stated are untrue and are therefore denied.

18. Answering paragraph XVIII of complainant's bill, it is expressly denied that the assessment of complainant's property in Rutherford County for the year 1927 in excess of 60% of the fair, cash, true, and/or market value thereof is illegal, unlawful and contrary to the Constitution of the United States, and these defendants also expressly deny that to enforce the tax and/or assessment as made and claimed by said Rutherford County would be a taking of complainant's property without due process of law, nor will it deny to complainant equal protection of the law because of the fact that complainant's property as now valued and assessed is valued and assessed at no higher rate or percentage of its actual value than that of other mills, corporations, farmers and business institutions situated in Rutherford County. Defendants further aver that the complainant has had a due and orderly hearing on its contentions before a Board of Review, has been given due opportunity to present its evidence and has received a conscientious and

careful hearing of its evidence, its contentions and arguments of its counsel; in addition thereto complainant, if it felt aggreieved by the decision of the State Board of Assessment, had an adequate remedy at law for a correction of any grievance in connection with the findings of said Board, Section 80, Chapter 464, of Public Laws of 1927, and Section 7979 of Consolidated Statutes of North Carolina providing adequate protection for redress by recourse to the State Courts of North Carolina of any wrong or inequalities, had the complainant suffered any such wrong in the action of the State Board of Assessment in fixing the value of complainant's property for taxation.

In view of the fact that the complainant has not been denied the equal protection of the laws of the State of North Carolina and in view of the fact that the complainant's property has not been assessed at a higher rate or [fol. 32] percentage than the property of other citizens of Rutherford County, these defendants deny that this is a matter over which the Federal Court should assume jurisdiction and deny that in this action the taxing authorities of Rutherford County have been guilty of any violation of the Fifth and Fourteenth Amendments of the Constitution of the United States. All the other allegations of paragraph XVIII of complainant's bill as therein stated are untrue and are therefore denied.

19. Answering paragraph XIX of complainant's bill, defendants deny that the tax which has been assessed against the complainant in this cause is illegal. It admits, however, that unless restrained from so doing and unless remainder of said tax which is due by complainant to the defendants is paid within a reasonable time that proper action will be taken by the authorities of Rutherford County to enforce its collection in accordance with law.

20. Defendants deny that the complainant is entitled to have and maintain a suit in equity against the defendants for injunctive relief because of the matters and things complained of in its bill. Defendants aver and allege that according to the provisions of Section 464, Chapter 80, Public Laws of 1927, and Section 7979 of Consolidated Statutes of North Carolina, the complainant has an adequate remedy at law in the State Courts of North Carolina and therefore equitable relief should be denied it.

And for a further answer and defense to the Complainant's bill these defendants allege as follows:

1. That neither the taxing authorities of Rutherford County nor the State Board of Assessment made any change in the valuation of the personal property of The Henrietta Mills as shown by the return of The Henrietta Mills filed for year 1927 to be of the value of $513,584.00;

That the only changes or amendments which were made to said return affected the valuation of the real estate, ma- [fol. 33] chinery, buildings, tenements and so forth. That the taxing authorities for Rutherford County amended said return by striking out a total valuation for said real estate, machinery, buildings, tenements, and so forth, of $1,373,-768.00 entered thereon by The Henrietta Mills and substituting therefor a total valuation for said real estate, machinery, buildings, tenements and so forth of $2,124,235.00; and that upon appeal from said valuation by The Henrietta Mills to the State Board of Assessment said State Board of Assessment reduced the total valuation on said real estate, machinery, buildings, tenements and so forth to the sum of $1,849,235.00;

That the valuation of $2,124,235.00 placed by the tax listing authorities of Rutherford County upon the real estate, machinery, buildings, and tenements of The Henrietta Mills was $56,565.00 less than the amount at which the very same property had been listed for taxation by the Henrietta Mills for the years 1926, 1925, and 1924 and that said valuation fixed by the taxing authorities of Rutherford County was $35,765.00 less than the value at which said Corporation had listed the very same property for taxation for the year 1923, said property having been listed for taxation for the year 1923 at the sum of $2,160,000.00.

That in the year 1920 the State of North Carolina in reassessing the value of real estate and personal property over the State employed experts for the purpose of correctly ascertaining, among other things, the value of real estate, mill buildings and equipment in Rutherford County and that said experts together with the taxing authorities of Rutherford County ascertained that the real estate, machinery, buildings, tenements and so forth of The Henrietta Mills was of the value of $2,400,000.00; that The Henrietta Mills was thereupon assessed for taxation on said property at a valuation of $2,400,000.00 for the year 1920.

That in the year 1921 a general order was made by the Board of Commissioners for Rutherford County reducing the value for taxation of all property in Rutherford County 10%; and that accordingly the real estate, machinery, buildings and tenements of The Henrietta Mills were re-
[fol. 34] duced in value for taxation to the sum of $2,160,-000.00, at which valuation said property was assessed for the years 1921, 1922 and 1923;

That the increase in value of the said property for taxation of $20,800.00 made in the year 1924 was occasioned because of the construction by The Henrietta Mills of 47 new tenement houses and the purchase of two additional houses.

That the valuation of said real estate, machinery, buildings and tenements of The Henrietta Mills placed thereon by the taxing authorities for the year 1920 and carried forward from year to year by the taxing authorities of Rutherford County since the year 1920, with only the exception of the 10% horizontal cut stated hereinabove and the addition of $20,800.00 valuation for 47 new houses constructed by the mill and two houses bought has been acquiesced in and accepted without protest by The Henrietta Mills and its duly constituted officers from the year 1920 up until this controversy arose over the assessment of the same property for the year 1927.

That by action of the taxing authorities of Rutherford County and the State Board of Assessment heretofore recited in this Answer the real estate, machinery, buildings and tenements of The Henrietta Mills is now assessed on the tax books of Rutherford County for taxation at a valuation which is $331,565.00 less than the valuation at which the same property has been assessed for taxation for the past five years and said present valuation of said property for taxation is $571,565.00 less than the same property was assessed for taxation for the years 1920 and 1921 (before the 10% cut in valuation which applied to all of the property was ordered by the Board of Commissioners).

That during all of these years The Henrietta Mills by and through its duly constituted officers has listed said property for taxation at the valuations shown in this section and at no time in the past until the controversy arose over the valuation of said property for taxation in the year 1927 has The Henrietta Mills made any protest or
[fol. 35] complaint to the tax listing authorities of Ruther-

ford County concerning any claims to over-valuation of said property for taxation.

2. That the complainant had due notice on July 3rd, 1927, that the proper authorities of Rutherford County had fixed the value of its real estate, machinery, buildings and tenements for taxation for the year 1927 at the sum of $2,124,235.00.

That the Board of Equalization and Review for Rutherford County duly and regularly convened on the second Monday in July, 1927, after having published notice of said meeting as required by law and that said Board continued to sit until the 15th day of July, 1927, during all of which time complainant had ample opportunity to protest the valuation placed on said property by the tax listing authorities of Rutherford County.

That the complainant has already been given a considerate and amble hearing of its contentions in reference to its claim concerning the over-valuation of its property before the State Board of Assessment which said Board, after having considered oral testimony of the complainant's witnesses, together with a number of affidavits submitted by the complainant and the defendants, has rendered its decision that the true value of the real estate, machinery, buildings and tenements of the complainant for taxation in Rutherford County for the year 1927 is the sum of $1,849,235.00; that the findings of said State Board of Assessment was conscientiously and honestly made in the exercise of their best judgment after hearing and considering a large amount of data and evidence in this matter and the action and findings of said State Board of Assessment is hereby specifically pleaded as a bar to the plea of the complainant to be allowed to prosecute its action in this Court.

3. That the complainant is not entitled to injunctive relief in this cause for that it has an adequate remedy at law in that Section 7979 of the Consolidated Statutes of North Carolina and of the North Carolina Code of 1927 provides as follows:

[fol. 36] "Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or

unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the non-payment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city or town for the amount so demanded, including in his action against the county both state and county tax and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer."

4. That the listing, valuation for assessment and assessing of the property of The Henrietta Mills for taxation in Rutherford County for the year 1927 was done in an orderly and careful manner by duly and regularly constituted officials who were careful in observing all of the provisions of the laws of North Carolina and of the United States with reference thereto and especially of Chapter 71, Public Laws of 1927; that the action of said taxing officials of Rutherford County and of the State Board of Assessmeent was taken in each instance after careful deliberation and after making all due investigation in an

[fol. 37] honest effort to ascertain the true value of the property of the complainant for the purposes of taxation for the year 1927 and that the values at which the property of the complainant is assessed for taxation in Rutherford County for the year 1927 is not excessive and that said property is not assessed at a higher per cent of its actual value than that of other property, mills, buildings, structures, farm lands and businesses in Rutherford County.

5. That the tax listers and assessors for High Shoals Township, in which the property of complainant is situated, and the Supervisors for Rutherford County were each conversant with the property in Rutherford County and in said Township and were men of good judgment, honest and conscientious; that after said tax listers and assessors had valued the property of The Henrietta Mills for taxation for the year 1927 this valuation was passed upon and approved at a meeting of the tax listers and assessors for Rutherford County and the Board of Supervisors for Rutherford County called for the express purpose of reviewing the valuation and assessments of property in Rutherford County to the end that it might be ascertained whether the various assessors had adopted the same means and methods of valuing land and property in the various townships, correcting any errors which might have been committed and equalizing the valuations in the different townships, and that at said meeting the valuation placed on the property of complainant by said list-takers and assessors was duly and regularly approved.

6. Defendants further aver that to the best of defendants' knowledge, information and belief the real estate, machinery, buildings and tenements of The Henrietta Mills as now valued and assessed on the tax books of Rutherford County is assessed for taxation at a smaller per cent of its actual value than any other cotton mill in Rutherford County, and to this end they show hereinbelow a list of a number of other cotton mill corporations in Rutherford County showing the value for taxation of their real estate, machinery, buildings and tenements, the number of spindles listed by each mill for taxation and the assessed value per spindle, namely:

[fol. 38]

Name of mill	Value of real estate, machinery, tenements, etc.	No. of spindles	Asessed value for taxation per spindle
Cliffside Mills	$2,051,500.00	61,280	$33.48
Alexander Mills	792,899.00	15,840	50.06
Florence Mills	669,854.00	19,920	33.63
Spencer Mills	243,980.00	8,704	28.03
Henrietta Mills	1,849,235.00	75,116	24.62

7. The defendants deny that complainant is entitled to any relief whatsoever or any part of the relief in said bill of complaint demanded, and allege that complainant has no standing in this Court or in any court of equity.

8. The defendants pray in all things the same benefit and advantages of this their Answer as if they had pleaded or demurred to said bill of complaint.

9. That for the purpose of resisting the injunctive relief prayed for by the complainant in this cause, it is asked that this Answer be treated and considered as an affidavit.

10. The defendants deny any and all manner of unlawful acts whatsoever whereof and which are in anywise by said bill of complaint charged, all of which matters and things these defendants are ready and willing to prove if this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

Wherefore defendants pray that the prayer of complainant's bill and each and every part thereof be denied.

Rutherford County, by W. G. Harris, Chairman of Board of Commissioners. W. C. Hardin, Sheriff of Rutherford County. Clyde R. Hoey, Quinn, Hamrick & Harris, Attorneys for Defendants.

[fol. 39] *Duly sworn to by W. G. Harris and W. C. Hardin. Jurat omitted in printing.*

[fol. 40] EXHIBIT A TO ANSWER

"Notice

The Board of County Commissioners of Rutherford County will meet on the second Monday of July, 1927, as

the Board of Equalization and Review, as required by law, to hear any complaints of the taxpayers in regard to the valuation of their property in said County.

This June 28, 1927.

W. G. Harris, Chairman."

STATE OF NORTH CAROLINA,
County of Rutherford:

C. E. Alcock, first being duly sworn, deposes and says that he is Editor of The Forest City Courier, publishers of The Forest City Courier, a newspaper published weekly in the town of Forest City, County of Rutherford and State of North Carolina, and having general circulation in said County, and that the foregoing Notice of meeting of the Board of Equalization and Review for Rutherford County was duly published in said newspaper in the issues thereof dated June 30th, 1927, and July 7th, 1927.

C. E. Alcock, Affiant.

Sworn to and subscribed before me this 5 day of May, 1928. C. L. Morris, Notary Public, Rutherford County, N. C. My commission expires on the 14 day of May, 1928. (Notarial Seal.)

[fol. 41] EXHIBIT B TO ANSWER

The Board of Commissioners for Rutherford County, sitting as a Board of Equalization and Review, met on Monday July 11th, 1927, first having given ten days notice of said meeting by publication of said notice in The Sun and Rutherford County News and Forest City Courier, three newspapers published in Rutherford County there being present W. G. Harris, Chairman, and G. W. Rollins and G. E. Morgan, Commissioners. Also there met with said Board Messrs. Geo. Biggerstaff, Z. O. Jenkins and C. F. Geer, County Supervisors for the purpose of giving the said Board such information as they could give in respect to the valuation of property for taxation in the county. Said meeting continued from day to day until July 15th, 1927, and the following 78 appeals from assessments and valuations made by the list-takers and Board of Appraisers were considered and passed upon, the same being all appeals which were presented by the taxpayers for the consideration of the Board of Equalization:

Name	Township	No. acres	Disposition made
[fol. 42] S. A. Bland	Sulphur Spgs.	80	No change.
R. W. Eaves	Sulphur Spgs.	...	No change.
G. P. Henson	Sulphur Spgs.	...	No change.
P. S. Gross	Sulphur Spgs.	...	No change.
A. H. Grose	Sulphur Spgs.	1½	No change.
Wm. White	Green Hill	72	Reduced from $4,250 to $4,000.
C. T. Hollifield	Cool Springs	...	Reduced from $3,798 to $3,360.
J. W. Taylor	Green Hill	...	No change.
Mrs. Lucy A. Davis	Logan Store	31	No change.
J. L. Kirby	High Shoals	90	Reduced from $5,000 to $4,700.
J. G. Hames	High Shoals.	132	No change.
J. W. Phillips	High Shoals.	28½	No change.
J. W. Phillips	Cool Springs	43½	Reduced from $1,300 to $1,100.
J. B. Mears	Cool Springs	Lot	No change.
R. C. Chapman	Cool Springs	...	Reduced from $4,000 to $3,865.
C. W. Costner	High Shoals.	80	Reduced from $5,995 to $4,800.
D. L. Smith	High Shoals.	64	No change.
O. E. Morrison	Logans Store.	184	No change.
C. O. Painter	Sulphur Spgs.	239	No change.
Horace Cole	Green Hill	113	Reduced from $2,400 to $2,004.
A. H. Early	Green Hill	406	No change.
John Owens	Green Hill	46	No change.
C. A. Green	Logans Store	30	No change.
Ed. Thompson, Tr.	Logans Store.	397	No change.
Ed. Thompson	Logans Store	210	No change.

Name	Township	No. acres	Disposition made
Ed. Thompson	Cool Springs	Home	No change.
Thompson Lbr. Co.	Logans Store	587	Reduced from — to $23,545.
Thompson, W. A.	Logans Store	348	Reduced from — to $10,500.
Thompson, W. A.	Rutherfordton	Home	No change.
J. O. Bland	Logans Store	60	No change.
[fol. 43] Mrs. D. B. Johnson	Rutherfordton	Home	Reduced from $4,000 to $3,500.
W. C. Lattimore (3)	Cool Springs	75	No change.
L. Q. McQuinney	Logans Store	40	No change.
Sue E. McKinney	Sulphur Spgs	413	No change.
W. A. Geer	Rutherfordton	40	Reduced from — to $800.
W. A. Geer	Rutherfordton	41	Reduced from — to $820.
Will K. McDowell	Sulphur Spgs.	460	No change.
John F. Sheehan	Green Hill	133	No change.
W. P. Smart	Camp Creek	120	Reduced from $4,365 to $4,000.
R. M. Twitty	Morgan	281	Reduced from $3,020 to $2,650.
Ponder Mfg. Co.	Rutherfordton	Lot	No change.
J. T. Ponder	Rutherfordton	Lot	Reduced from — to $1,000.
J. W. Scruggs	High Shoals.	193	No change.
R. C. Scruggs	High Sh*aosl*.	30	No change.
J. W. Ponder	Rutherfordton	Lot	No change.
T. A. Bostic	Sulphur Spgs.	50	Reduced from $7,242 to $6,440.
T. A. Bostic	Sulphur Spgs.	31	No change.
W. F. Roberston	Logans Store.	249	No change.
A. G. Morgan	Logans Store.	122	Reduced from — to $3,500.
G. C. Randall	Sulphur Spgs.	70½	Reduced from — to $4,324.

W. R. White	Gilkey	73	Reduced from $2,860 to $2,500.
J. B. DePriest Heirs	Logans Store	146	Reduced from $5,670 to $5,100.
J. B. DePriest	Logans Store	101	No change.
Ellenboro Mfg. Co.	Colfax	65½	No change.
T. C. Wood	High Shoals	144	No change.
A. H. Martin	Colfax	79	No change.
W. L. Long	Logans Store	184	Reduced from $11,000 to $10,500.
W. L. Long	Logans Store	77	Reduced from $1,694 to $1,500.
W. L. Long	Logans Store	20	Reduced from $120 to $65.
Mrs. N. L. Walker	Colfax	¾	No change.
[fol. 44] L. Purgason	Logans Store	51	No change.
D. J. Long	Logans Store	30	Reduced from $1,350 to $1,200.
R. K. Hollifield	Cool Spgs.	Lot	No change.
A. C. Jones	Cool Springs	Lot	No change.
H. P. Abrams	Union	78	No change.
N. W. Abrams	Union	120	No change.
L. E. Abrams	Union	74½	No change.
N. M. Ponder	Rutherfordton	Lot	No change.
Poole-Marks-Turner	Cool Springs	Lot	No change.
J. N. Cudd	Sulphur Spgs.	494	Reduced to $67.50 per acre.
H. C. Cudd	Sulphur Spgs.	60	No change.
Mrs. P. D. Harrill	Cool Spgs.	Lot	No change.
J. W. Beason	High Shoals	172	Raised from $9,000 to $9,690.
D. A. Shehan	Rutherfordton	...	No change.
M. L. & H. H. Edwards	Rutherfordton	75	Reduced from $7,500 to $7,000.
F. T. Thompson	Sulphur Spgs.	...	Reduced to $70.00 per acre.

[fol. 45] There being no further complaints presented to the Board of Equalization, and said Board having gone over and considered the assessments and valuations of property by the List Takers and Supervisors of property in Rutherford County for the year 1927, and having determined that the valuation placed thereon by said list takers and supervisors (except as the same has been changed by the order of this Board as shown by the minutes of this meeting) is the true value in money of the property of Rutherford County listed for taxation for the year 1927, do hereby adopt said valuation of said property as the true value thereof for taxation for the year 1927 and do hereby direct that within five (5) days from the adjournment of this meeting that the clerk of this Board furnish the State Board of Assessors with a copy of all the proceedings of this Board with respect to any and all changes made by said Board of Valuation made and returned by the Township List Takers and Assessors.

There being no further business before the meeting, the same was, on motion duly made, recorded and carried, adjourned.

W. G. Harris, Chairman, Board of Commissioners.
W. O. Geer, Clerk, Board of Commissioners.

STATE OF NORTH CAROLINA,
County of Rutherford:

I, W. O. Geer, Register of Deeds and Clerk to the Board of Commissioners for Rutherford County, hereby certify that the foregoing and annexed two (2) typewritten sheets (entitled EXHIBIT B) contain a true accurate and correct copy of the minutes of a meeting of the Board of Commissioners for Rutherford County, sitting as a Board of Equalization and Review, held on Monday, July 11th, 1927, and adjournments thereof, as taken from and [fol. 46] compared with the original minutes of said meeting and adjournments on file in my office in Minute Book 10 at pages 92-A and 92-B.

Witness my hand and seal of office, at Rutherfordton, North Carolina, this 5th day of May, A. D., 1928.

W. O. Geer, Register of Deeds for Rutherford County and Clerk to the Board of Commissioners for Rutherford County. (Seal) Rutherford County Register of Deeds, North Carolina.

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NORTH CAROLINA

[Title omitted]

AFFIDAVIT OF ALLEN JONES—Filed May 18, 1928

Allen Jones, being first duly sworn, upon oath deposes and says:

That during the past ten years he has visited and examined numerous cotton textile mills located in North Carolina, South Carolina, Georgia, Alabama, Massachusetts, Texas and in New England states, primarily to determine the condition of said mills and mill equipment, and to consider other matters incidental to operating mills in various localities:

[fol. 47] That among the cotton textile mills he visited in September and October 1926 were the plan-s of The Henrietta Mills in the states of North and South Carolina, consisting of real estate, mill buildings, mill and mill equipment; That during September and October, 1926 he had occasions to examine machinery, equipment and plants of The Henrietta Mills and from his examination and knowledge thus obtained is familiar with and knows the condition of the machinery and equipment in the plants of The Henrietta Mills in Rutherford County, North Carolina;

That affiant secured from the files and records of Henrietta Mills, and checked by actual examination, a list of its machinery and equipment and is familiar with all equipment and machinery in said plants in Rutherford County purchased subsequent to October 1, 1926, and verily believes that the list of machinery and equipment shown on Exhibit A hereto attached and made a part hereof, covers and includes all the machinery and equipment in or about said plants or either of them; that said Exhibit A also shows the real estate, mill buildings, mill, machinery and mill equipment; that the valuations shown by said Exhibit A were determined by affiant, and affiant verily believes that said valuations represent actual, true, fair market and cash value as of May 1, 1927;

That the plants of Henrietta Mills in said County of Rutherford in the state of North Carolina were not, nor

was either of them, in October 1926 or on May 1, 1927, up-to-date, modern, nor can they be made modern without the installation of modern equipment therein and scrapping the equipment in said mills, including power equipment, and it is an easy matter to determine that said mills or either of them are not modern or up-to-date.

That said plants, and each of them, in September and October 1926, were in a run-down condition, not in good repair or condition, and indicated use and operation thereof for many years; That even with a large expenditure of money in repair and reconditioning said plants and equipment, same, or either of them, cannot be made an up-to-date, modern plant save and except by the method above stated.

[fol. 48] That in the last ten years the affiant has had occasion to examine a number of similar plants and assist in the operation of said similar plants and knows of sales of similar plants and verily believes that the true value in money of a similar mill with modern equipment, in good condition, having been used for approximately ten years, would not be in excess of values shown on attached Exhibit A.

Allen Jones.

Subscribed and sworn to before me this 2nd day of May, 1928. Paul M. Berry, Notary Public. (Notary Seal.)

"EXHIBIT A"

Schedule of Manufacturing Properties

The Henrietta Mills, Caroleen, N. C.

Machinery (See Schedules attached)		567,402.00
Machine shop and power equipment (See Schedules attached)		35,914.00
Fire protection (See Schedules attached)		59,903.00
Miscellaneous equipment (See Schedules attached)		108,000.00
Mill Buildings:		
Henrietta Mill (116,617 sq. ft)	87,463.00	
Caroleen Mill (174,057 sq. ft.)	130,544.00	
		218,007.00
Warehouses:		
Henrietta Mill (76,846 sq. ft)	88,422.00	
Caroleen Mill (66,490 sq. ft.)	33,245.00	
		71,667.00

Stores:		
Henrietta Mill	10,000.00	
Caroleen Mill	20,000.00	
		30,000.00
Tenements:		
Henrietta Mill (202 houses, including Tanner House—1,055 rooms)	105,500.00	
Caroleen Mill (246 houses—1,172 rooms)	117,200.00	
13 negro houses, 48 rooms	3,600.00	
		226,300.00
Total		$1,317,193.00

[fol. 49] To this schedule was attached and introduced in evidence an itemized detailed list of all machinery and properties referred to and made a part of the schedule, but which list is not necessary to an understanding of the appeal in this case.

AFFIDAVIT OF ALLEN JONES—Filed May 18, 1928

[Title omitted]

STATE OF NORTH CAROLINA,
County of Buncombe:

Allen Jones, being first duly sworn, upon oath deposes and says:

As stated in his former affidavit filed herein, he is familiar with the property of Henrietta Mills in the county of Rutherford, state of North Carolina, with the records and files of said Henrietta Mills, showing the various dates of installation of equipment and machinery in the manufacturing plants of Henrietta Mills at Caroleen and Henrietta in Rutherford County, North Carolina.

That some of the machinery and equipment in said plants shows date of manufacture by appropriate markings upon the machinery and equipment. That from said records and markings machinery and equipment in said plants was installed at or about the dates shown in exhibit A, hereto attached and made a part hereof. That the average age of said machinery and equipment is about twenty years, [fol. 50] and the details of the ages of said machinery and equipment are shown by said exhibit A.

That the water power of the Henrietta Mills at its plants above mentioned and also at its plant at Cherokee Falls

South Carolina are dependent upon the flow of the river, which in turn is governed by rains largely, and no pond or reserved water power is available at either of said three plants. That the ponds or area above the dams at Caroleen and Henrietta have been to a very great extent filled with silt or soil, and the Henrietta Mills have been compelled to, and have paid for electric energy for operating said plants at Caroleen and Henrietta during the year 1927 over $80,000.00.

That the records kept by the Henrietta Mills in the ordinary course of business at said Caroleen and Henrietta plants show an average of approximately one thousand horse power developed from water out of a total average of thirty-five hundred horse power required to operate said two plants. That said water power is not continuous and varies from day to day and the thousand horse power mentioned is the average for the year 1927. Thirty-five hundred horse power is required to operate said plants.

That the total cost for all power, water, steam and electric, at Caroleen and Henrietta is greater per horsepower than the cost of electric power at a similar plant in South Carolina; to-wit Valley Falls Mills, Valley Falls South Carolina. That the steam plants at Henrietta and Caroleen are obsolete, and it is more economical for the Henrietta Mills to purchase electric power, even at the high rates it is required to pay at said plants, than it is for it to operate its said steam plants.

That only a few of the houses in the Villages at Caroleen and Henrietta have any running water or plumbing fixtures. That many of them are in very great need of repair and there ought to be expended thereon for repairs alone $250,000.00, and a like sum to modernize them.

That in 1920 or 1921 the peak of the cost of buildings, equipment and machinery was reached and there has been a decline from that peak of about thirty-three and one-third percent, between said peak and May 1st, 1927.

[fol. 51] Affiant has read the affidavit of G. W. Rollins and that new modern up to date buildings at the plants at Caroleen and Henrietta could be constructed for about $435,000.00, but the old out-of-date buildings under consideration are liberally allowed for in affiant's former affidavit herein in the sum of $218,007.00, and likewise new

modern and up-to-date warehouses could be constructed for $135,000.00, but the old out of date warehouses under consideration are liberally allowed for in affiant's former affidavit herein in the sum of $71,667.00.

Allen Jones. (Seal.)

Subscribed and sworn to before me this 18th day of May, 1928. J. Y. Jordan, Clerk U. S. Ct., by W. A. Lytle, Dep. Clk. U. S. Dist. Court. My commission expires —— —, ——. (U. S. District Seal.)

EXHIBIT A

Henrietta Mills

Date of Installation of Machines & Equipment

Dates	Number of machines
1883-1887	94
1888-1892	161
1893-1897	328
1898-1902	199
1903-1907	457
1908-1912	92
1913-1917	1,020
1918-1922	108
1923-1928	29
	2,488

Average age of Machines & Equipment, 20 years.

[fol. 52] AFFIDAVIT OF W. G. DIMAN—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Buncombe:

W. G. Diman, being duly sworn deposeth and says:

That he has read the affidavit of Allen Jones, a copy of which is attached hereto and made a part hereof, and

that the same is a true statement to the best of his belief. That affiant is an engineer of twenty-five years' experience, of which seventeen years he has had to do with cotton textile manufacturing plants.

W. G. Diman.

Subscribed and sworn to before me this 18th day of May, 1928. J. Y. Jordan, Clerk U. S. Dist. Ct., by W. A. Lytle, Deputy Clk. (U. S. District Seal.)

AFFIDAVIT OF THOMAS NELSON—Filed May 18, 1928

NORTH CAROLINA,
Wake County:

Thomas Nelson, being duly sworn, deposes and says:

That he is Dean of the Textile School at North Carolina State College of Agriculture & Engineering and has been so connected with that institution for twenty-seven years; that prior to that time he had had practical textile mill experience; that during the last several years he has from time to time been employed by various counties in North [fol. 53] Carolina to make appraisals of cotton mill properties located in such counties, with a view to fixing tax assessments thereon; that in December, 1927 he made an appraisal of the properties of the Henrietta Mills in Rutherford County, North Carolina, known as Henrietta Mills numbers one and two, located at Henrietta and Caroleen in said County of Rutherford; that he made a careful and minute examination of the properties of said Henrietta Mills and made careful computations as to the value of the properties and all of the equipment connected therewith; that immediately thereafter he appraised said properties as being worth $1,347,154.00, which represented in his opinion the true and actual value in money of these properties.

That he was employed to make said appraisal by the Henrietta Mills and that he made this appraisal on the same basis as he has made other appraisals for various political subdivisions of the State of North Carolina; that this is the first occasion that he has been called upon to make an appraisal for any but counties or other taxing

subdivisions of the State; that in the opinion of affiant the value of the properties of the Henrietta Mills in Rutherford County, North Corolina, as of May 1st, 1927, or at any other time during said year, was not in excess of $1,347,154.00; that in his opinion said appraisal represents the true and actual value in money of these properties and not what is frequently referred to as a tax valuation, where properties are assessed for taxation at less than their actual value.

Thomas Nelson.

Sworn to and subscribed before me this 3 day of May, 1928. J. O. Brady, Notary Public. My commission expires 8/24/29. (Seal.)

Service accepted, copy received May 10, 1928.
Quinn, Hamrick & Harris, by Fred D. Hamrick.

[fol. 54] AFFIDAVIT OF W. S. FORBES—Filed May 18, 1928

[Title omitted]

W. S. Forbes, being first duly sworn, upon oath, deposes and says:

That for some two years or more prior to October 1, 1926, he was, from time to time, in active negotiations for the sale of the common shares of stock in The Henrietta Mills and Edna Cotton Mills (both North Carolina Corporations) which shares represented voting control of the common stock of said corporations:

That the properties of The Henrietta Mills included plants located in Rutherford County, North Carolina, consisting of 75,116 spindles, and in Cherokee County, South Carolina, 30,732 spindles; that during said two years prior to said October 1, 1926, he endeavored to interest other parties in the purchase of said shares of stock; that resulting from his various negotiations on October 1, 1926, 1,634 shares of the common stock of The Henrietta Mills and 2,500 shares of the common stock of Edna Cotton Mills were sold;

Deponent further states that on or about November 1, 1926, he sold 1,568 shares of the common stock of The Hen-

rietta Mills and 350 shares of the common stock of Edna Cotton Mills, making a total of 3,202 shares of the common stock of The Henrietta Mills and 2,850 shares of common stock of Edna Cotton Mills; that Edna Cotton Mill owned [fol. 55] 5,802 shares of the common stock of The Henrietta Mills and that the total outstanding shares of common stock of The Henrietta Mills was 13,500 and that the total outstanding shares of common stock of Edna Cotton Mills was 4,800, and therefore that the 3,202 shares of common stock together with the common stock of the Henrietta Mills owned by Edna Cotton Mills constituted voting control of The Henrietta Mills;

That there was in the treasury of Edna Cotton Mills sufficient shares of the common stock of The Henrietta Mills to be equivalent to approximately 1-1/5 shares for each share of common stock of Edna Cotton Mills outstanding. Therefore, for each share of the common stock of Edna Cotton Mills which he sold, he really sold approximately 1-1/5 shares of the common stock of The Henrietta Mills. That by actual calculation the 2850 shares of Edna Cotton Mills actually represented 3445 shares of the common stock of Henrietta Mills.

Deponent further states that for the 6647 shares of the common stock of The Henrietta Mills he received in cash, or by cancellation of his debts, $660,526, which is slightly less than $100. per share. Deponent further says that he has seen the statement of The Henrietta Mills as certified by Frank P. Stratford, C. P. A., as of September 30, 1926, and the same sets forth the valuation of lands, buildings, machinery, equipment, etc., at $2,009,295.56; that as of September 30, 1926, the properties of The Henrietta Mills contained 105,848 spindles, and that according to such certified statement the value per spindle is slightly less than $19. per spindle.

Deponent further says that through his experience in trying to sell the property during the two years next preceding October 1, 1926, he verily believes the true and actual value in money of the said properties of The Henrietta Mills could not have been in excess of $19. per spindle and that the value that he received for the said property did not represent an amount in excess of $19. per spindle.

W. S. Forbes.

[fol. 56] Subscribed and sworn to before me this 4th day of May, 1928. Joseph A. O'Neill, Notary Public. Com. expires May 22, 1928. (Seal.)

Service accepted, copy received this May 10, 1928.
Quinn, Hamrick & Harris, by Fred D. Hamrick.

AFFIDAVIT OF R. B. KNOX—Filed May 18, 1928

[Title omitted]

R. B. Knox, being first duly sworn, on oath deposes and says:

That he has been operating cotton mills in the State of North Carolina for twenty years, and that he has had occasion to purchase certain machinery and equipment for a cotton mill located in Newton, North Carolina, on or about June 1924, and that during 1925 and 1926 he had occasion to examine other cotton mills for the purpose of determining the cost of machinery required for two cotton mills which were then being reorganized;

That during the year 1926 he had occasion to purchase [fol. 57] new and modern equipment for two cotton mills and knows the cost of new equipment (not including looms, power equipment, mill buildings and village) is not less than $14. per spindle;

That even with a large expenditure of money repairing and reconditioning the two plants stated above, the same cannot be made up-to-date, modern plants without the installation of modern equipment;

That on September 26, 1927 he visited the properties of the Henrietta Mills located at and near Caroleen, Rutherford County, North Carolina, and inspected its machinery, equipment, mill buildings and tenements; that said plants of Henrietta Mills and each of them are in a run-down condition and indicate operations for many years, and they could not be made modern, up-to-date plants without the installation of modern equipment including power equipment; that even with a large expenditure of money in repairing and reconditioning said plants and equipment, same or either of them cannot be made up-to-date, modern

plants save and except by the installation of new machinery and equipment;

That in the last ten years affiant has had occasion to examine a number of cotton mills and verily believes that the value of a modern cotton mill manufacturing 30s and 40s yarns with modern equipment in good condition having been used five years or more would not be in excess of $21. per spindle.

R. B. Knox.

Subscribed and sworn to before me this 2nd day of May, 1928. R. C. Reinhardt, Notary Public. My com. expires Febr. 22, 1930. (Notary Seal.)

Service accepted. Copy received May 10, 1928.
Quinn, Hamrich & Harris, by Fred D. Hamrich.

[fol. 58] AFFIDAVIT OF R. E. PRICE—Filed May 18, 1928

NORTH CAROLINA,
Rutherford County:

R. E. Price, being duly sworn, deposes and says:

That he is President of Rutherford County News, Inc.: that he is also Editor of the said newspaper which is published in Rutherfordton, N. C.; that on February 9th, 1928, a news article was published in Rutherford County News under a double column head entitled "Rutherford County Pays Big Sum of Indebtedness"; that this article was written by affiant and that the figures and data contained in the paragraphs immediately following the sub-heading "Property Valuation" and running down to the sub-heading "Crime Costing Much" were secured by affiant from Mr. M. R. Reid, Assistant County Accountant of Rutherford County, and came from data from the County Accountant's office;

That the attached clipping is the news item hereinabove referred to.

R. E. Price.

Sworn to and subscribed before me this the 10 day of May, 1928. W. W. Nanney, Notary Public. (Seal.)

Service accepted. Copy received this May 10, 1928.
Quinn, Hamrick & Harris, by F. D. Hamrick.

[fol. 59] Rutherford County Pays Big Sum of Indebtedness

Indebtedness of County Reduced Nearly 25 per Cent

Interesting Figures on County—Debt per Capita was $99.00—County Ranks 22nd in Taxable Property per Person—Crime Costing County Large Sum

The total indebtedness of Rutherford county was reduced $795,325 from July 1, 1927 to Jan. 16th, 1928, or about 25 per cent. According to the University News Letter the total county and school debt of Rutherford county was $3,361,470 last year, or about $99.50 per person.

Nine counties of the state had a larger debt than did Rutherford. Only 29 counties of the state have less than a million dollars indebtedness. Guilford county has the largest debt, $7,453,943 while Currituck has the smallest $164,665. The average county of the state has a per capita debt of $60.95.

Property Valuation

The property valuation of Rutherford in 1926 listed for taxation was $34,240,555. It was $36,302,627 in 1927, which was a gain of over $2,000,000. The estimated actual valuation of all property in the county last year was $60,000,000.

The money paid on county indebtedness from July 1, 1927 to Jan. 16, 1928 is divided as follows:

School notes paid	$150,000.00
Highway No. 20 notes paid	600,000.00
Total notes paid	$750,000.00
County wide bonds retired	17,500.00
School building loans paid to State of North Carolina	12,825.00

Special Subdivisions

Charlotte-Asheville highway bonds retired.....	4,000.00
Caroleen-Henrietta district school bonds retired	4,000.00
[fol. 60] Cool Springs school bonds retired.....	3,000.00
Rutherfordton - Spindle - Ruth district school bonds retired.....	4,000.00
Total reduction of county wide and subdivision	$795,325.00

This means a big saving in interest of $40,000 per year at 5 per cent.

Thirty-nine per cent of total school tax collected is represented by special tax districts.

Crime Costing Much

Beginning last July 1, all departments of the county went on a budget. Some departments will report a balance by July 1, 1928 while all must live within their budget.

The judiciary budget, for courts calls for $7500 from June 30, 1927 to July 1, 1928; outside poor help, $7500; jail $5735; Recorder $1500; Juvenile court, $300, while the chain gang is operated as part of total road work of the county.

Witness fees, court st-nogrepher, etc., cost the county $657.90 from July 1, to Nov. 30th, 1927. The jury fees, including the grand jury cost $1822.32 from July 1st to Oct. 1, 1927. The total cost of courts to the county from June 30, 1927 to Nov. 30, 1927 was $3740.68.

For the five months ending Nov. 30, 1927 the jail fees amounted to $3085.57.

The County Treasurer writes about 300 checks per month. Some are written in triplicate while all are written in duplicate.

The estimated population of the county on Jan. 1, 1928 was 38,000 people.

[fol. 61] Affidavit of B. M. Graves—Filed May 18, 1928

[Title omitted]

B. M. Graves, being duly sworn, deposes and says that he is a resident and citizen of the City of Charlotte, State

of North Carolina, and is associated with the Southern Textile Machinery Company; that he has been for the past twenty years engaged in the business of buying and selling machinery from and to manufacturers of cotton yarns and fabrics; that he was on May 1, 1927 familiar with the plants and equipments of the Henrietta Mills, Nos. 1 and 2, at Henrietta and Caroleen; that he has been through these mills and has carefully examined and listed machinery and equipment as well as making a survey of water power and equipment, tenement houses and other physical properties; that the said machinery in Mill #1, consisting of practically all roving frames, spinning machinery, spoolers, warpers, transmission equipment with power, was on May 1, 1927 antiquated and entirely out of date, that the said power and transmission equipment on account of excessive friction load is largely a liability instead of an asset; that the buildings of said Mill No. 1 are far from modern and on this account the expense of artificial lighting is entailed. The tenement houses for both Mills 1 and 2 were on May 1, 1927 ones of the cheapest construction and largely in bad repair. Mill No. 2 practically the same conditions prevail as to Power and transmission equipment in the way of excessive friction loads, large size motor equipment, which are out of date, roving machinery in said Mill No. 2 also was on said [fol. 62] May 1, 1927 in a badly worn condition and more or less out of date. The values placed on these properties as shown in itemized list attached are fair and more or less excessive and that the total of the two properties should not exceed the amount of $814,318.00.

(Signed) B. M. Graves.

Subscribed and sworn to before me this 8th day of May, 1928. (Signed) Will C. Kendrick, Notary Public. My commission expires Feb 6, 1929. (Seal N. P.)

To this affidavit was attached an itemized list of properties making up the total valuation referred to, but which list is not necessary to an understanding of the appeal in this case.

AFFIDAVIT OF FRANK P. STRATFORD—Filed May 18, 1928

NORTH CAROLINA,
Rutherford County:

Frank P. Stratford, being duly sworn, deposes and says:

That he is County Accountant for Rutherford County and has held that office since the 1st day of May, 1927; that he participated in the handling of a bond issue for Rutherford County during December, 1927; that in connection with said bond issue the United States Mortgage & Trust Company of New York City acted as fiscal agent for the said County and also handled part of the advertising of said bonds for sale; that there was turned over to the said United States Mortgage & Trust Company certain data to be used in advertising said bonds for sale, a copy of which data being attached hereto in a typewritten or mimeograph form and marked "Exhibit A"; that this data was also put in printed [fol. 63] form and approximately Two Hundred (200) of these printed advertisements were sent out by the United States Mortgage & Trust Company, and approximately Fifty (50) were sent out by W. O. Geer, Clerk to the Board of County Commissioners; that in addition thereto affiant also handed out the identical data as was contained in the printed advertisements and which was re-copied in mimeograph or typewritten form, of which the attached data is an exact copy;

That following these advertisements affiant and the Board of County Commissioners, acting for and in behalf of Rutherford County, received various bids for the bonds so advertised and said bonds were finally sold, the main details of the transaction being handled by affiant;

That Chester B. Masslich, Attorney of New York City, was employed by Rutherford County to handle, or assist in handling the bond issue of $841,000.00 for said County, which issue was sold during December, 1927; that after the employment of said Masslich by Rutherford County, affiant and Mr. N. C. Harris, Attorney at Law, of the firm of Quinn, Hamrick & Harris, and Attorney for Rutherford County, received shortly after November 16th, 1927, a letter from the said Chester B. Masslich, dated November 16th, 1927, and in said letter was a request for certain information relative to Rutherford County, and among other things

asked for financial statistics of the County to be used in the bond circular, paragraph (d) of said letter being as follows:

"(d) Financial statistics for the circular. These should cover assessed valuation as last fixed, an estimate of the actual valuation (as distinguished from assessed valuation), total bonded debt for all purposes including schools, sinking funds, offsets from debts by reason of amounts due the County from school districts and others which, when collected, will be applied upon debt, floating debt, separately itemizing the bond anticipation notes outstanding and other notes (but not County revenue anticipation notes to be paid from the current year's taxes). I shall enclose with this letter a skeleton form for such statement but perhaps you may need to vary this form (I am sending a copy thereof to Mr. Stratford").

[fol. 64] That in response to said letter and in connection with the preparing for a sale of said bonds, affiant, on November 22nd, 1927, wrote a letter to said Chester B. Masslich and sent a copy to said Mr. N. C. Harris, County Attorney, a copy of which letter is hereto attached and identified by affiant's signature thereon, and marked "Exhibit B."

That in connection with furnishing information to the said Masslich for use in advertising said bonds, affiant prepared, or caused to be prepared under his supervision, a statement of the financial condition of Rutherford County, a copy of which statement is hereto attached and has been identified by the signature of affiant thereon, and marked "Exhibit C."

That in a letter from Chester B. Masslich, dated November 25th*m* 1927, addressed to affiant as County Accountant of Rutherford County, the said Masslich set forth the assessed valuation of Rutherford County for 1927 at $36,-302,627.00 and the estimated actual valuation $60,000,000.00; That affiant has in his possession said letter of November 25th, 1927.

Frank P. Stratford.

Sworn to and subscribed before me this the 10 day of May, 1928. W. W. Nanney, Notary Public. My commission expires May 21, 1928. (Notary Seal.)

The pertinent parts of the Exhibit A referred to in the foregoing affidavit of Frank P. Stratford, are as follows:

* * * * * * *

"Page No. 2

Advertisement and Blank Proposal for Rutherford County Bonds

[fol. 65] Financial Statement

Rutherford County, North Carolina

Assessed Valuation 1927	$36,302,627.00
Estimated Actual Valuation	60,000,000.00
General County Bonds outstanding	$1,543,500.00
Notes due State for school loans	236,412.00
Highway Notes due December 15, 1927	600,000.00
Highway Notes due September 3, 1929	300,000.00
Bonds now offered	841,000.00
Gross debt, including bonds now offered	$3,520,912.00

Deductions:

Cash on hand for payment of notes due December 15, 1927	$600,000.00	
Cash on hand for payment of notes due September 3, 1929	120,000.00	
Loans to school district which, upon payment, are pledged to outstanding school debt included above (consisting of the $236,412 notes due State for school loans and $240,000 of the $1,543,500 General County Bonds)	336,737.00	
Total of deductions		$1,056,737.00
Net debt, including bonds now offered		$2,464,175.00

(Above figures do not include bond anticipation notes to be paid simultaneously with issuance of bonds now offered.)

[fol. 66] No tax anticipation notes are outstanding.
Population, census 1920, 31,426.
Estimated present population, 38,000.
County tax rate, $1.46 per $100."

* * * * * * *

"Rutherford County has about $1,500,000 invested in modern school buildings. There are twenty-four of the most modern type of consolidated school buildings, the buildings being constructed of brick, all having been erected since 1920. The State Department of Education has placed Rutherford County, both in 1925 and in 1926, as having made the greatest advance in education, both from the standpoint of facilities and results, ahead of any other county in the State of North Carolina."

* * * * * * *

"Rutherford County has a $75,000 County Home for the care of the poor and destitute sick. The County boasts of a hospital of about sixty beds, which in equipment and personnel, is second to none in this or neighboring states in comparison with its size. The County owns a very modern and up to date $75,000 jail. Its court house is ultra modern in every respect, and a most impressive structure, erected at a cost of $250,000, which price is generally conceded to be a bargain."

* * * * * * *

The pertinent part of Exhibit B referred to in foregoing affidavit of Frank P. Stratford is as follows:

* * * * * * *

"Referring to your letter of November 16th which I have fully discussed with Mr. N. C. Harris, County Attorney, who returned to Rutherfordton this morning, I am enclosing the following papers in duplicate:

(a) Statement of Financial Condition.

(b) Certified List of County Officers and Seal.

(c) Certificate of W. O. Geer that he expects to continue in office until January 9th, 1928, and Signature of W. O. Geer.

[fol. 67] With reference to financial statement. You will note the assessed valuation is $36,000,000, whereas we have stated the estimated actual valuation $60,000,000. As I understand it, in North Carolina the assessed valuation is supposed to be 100%, but we all know that it rarely is, and this estimated actual valuation is given you after consultation with persons who are in position to be fairly good judges. Frankly, our Commissioners are often too ready to please tax-payers by listening to their arguments for low valuation."

Rutherford County, North Carolina

Statement of Financial Condition

Assessed valuation as last fixed for taxation (1927)	$36,302,627
Estimated actual valuation	60,000,000
Total bonded debt outstanding	2,174,500
Bond anticipation notes outstanding	841,000
Other notes outstanding	900,000
Other indebtedness not evidenced by bonds or notes	236,412
Bonds presently to be sold not included above	841,000
Sinking funds on hand applicable to outstanding bonds	19,806.55
Sinking funds on hand applicable to outstanding notes other than bonds anticipation notes	720,000
Due to County from School District for application upon outstanding County bonded debt	536,103.42

Above figures do not include outstanding Revenue Anticipation, Notes payable from the current year's tax levy, the amount of such notes being $ None.

Estimated population of County, 38,000.

County Tax Rate, 1.46 per 100.00 value.

[fol. 68] Affidavit of Frayser Jones—Filed May 18, 1928

[Title omitted]

State of North Carolina,
County of Buncombe:

Frayser Jones, being first duly sworn, upon oath deposes and says:

That he is well acquainted with W. S. Forbes, who was at all times and days herein mentioned a resident of Richmond, Virginia.

The affiant represented the purchaser of certain shares of common stock of Henrietta mills during the year 1926, and that he is familiar with the prices paid for such shares. That during the negotiations said W. S. Forbes represented that he was the owner, and for a long time had been the owner of shares of the common stock of Henrietta Mills representing voting control of the Henrietta Mills; and that in March 1926 said W. S. Forbes contracted to sell and deliver shares of common stock representing voting control of the Henrietta Mills and obligated himself to deliver coincidental therewith the resignation of the officers and directors of the corporation and also a cancelation of any and all agreements covering the sale of merchandise manufactured by the corporation, particularly any contract between the corporation and Woodford and Moorehouse of New York City.

[fol. 69] Affiant further says that subsequent to March 1926 said W. S. Forbes stated that Mr. Woodford of the partnership of Woodford & Moorehouse refused to agree to the cancelation of such sales contract unless all of the shares of common stock in both the Henrietta Mills and Edna Cotton Mill owned by K. S. Tanner, J. H. Thomas, J. B. Pipkin and C. M. Woodford and/or the interest which they represented were purchased.

Affiant further states that at the request of W. S. Forbes and J. B. Pipkin he entered into negotiations for the purchase of these shares as the result of which he obtained an option on seven hundred and seventy-eight (778) shares of common stock of Henrietta Mills, which option set forth that if accepted the sales contract would be canceled.

Affiant further states that W. S. Forbes agreed that if the purchaser of his shares of stock would also purchase the shares represented by said Woodford, that he would make a reduction in price of his shares. As further evidence that K. S. Tanner, J. S. Thomas, J. B. Pipkin and C. M. Woodford combined to force the sale of their shares as a consideration for cancelation of the sales contract, affiant states that C. M. Woodford personally represented himself to be the seller and entered into a contract solely on his own account for the sale and the said

C. M. Woodford received the first cash payment and made disbursement to the other stockholders himself.

Affiant further states that within thirty (30) days from the date of delivery of the shares of stock above referred to, that he did personally buy from the said C. M. Woodford shares of common stock of Henrietta Mills, and for which he paid or contracted to pay One Hundred ($100.00) Dollars per share, and affiant verily believes that said C. M. Woodford would not have sold him the said shares of stock for $100.00 per share if he believed them to be worth more than $100.00 per share, nor if he could have obtained more than $100.00 per share.

That the affiant is familiar with other sales and purchases of common stock of the Henrietta Mills made sub- [fol. 70] sequent to the transaction with W. S. Forbes, which transaction was hereinbefore mentioned.

That on November 1, 1926, Fifteen hundred, sixty-eight shares sold at $96.03 per share. On January 27, 1927, twelve shares sold at $100.00 per share. On February 14th, 1927 forty shares sold at $100.00 per share. On November 25th, 1927, two hundred and forty-six shares sold at $95.64 per share.

Within the files of the Henrietta Mills there were and are statements prepared by certified auditors showing that the surplus account of the Henrietta Mills as of December 30, 1922 was over $723,000.00, and that said surplus account was reduced so that there was a deficit of over $130,000.00, as of September 30, 1926, and that said statements shows a reduction of net current assets of over $635,000, as of December 30, 1921 was reduced to $251,416.12 as of September 30, 1926. No dividend has been paid on common stock since 1924 and no dividend has been paid on preferred stock since Oct. 1, 1926 and affiant believes any dividend cannot nor legally be paid now.

Frayser Jones. (Seal.)

Subscribed and sworn to before me this 18th day of May, 1928. J. Y. Jordan, Clerk U. S. D. Ct. W. A. Lytle, Deputy Clerk U. S. D. Court. (U. S. District Seal.)

AFFIDAVIT OF C. H. LOCKMAN—Filed May 18, 1928

[Title omitted]

[fol. 71] STATE OF NORTH CAROLINA,
County of Rutherford, ss:

C. H. Lockman, being duly sworn, upon oath, deposes and says: That he is the superintendent of the cotton mill of The Henrietta Mills at Caroleen, Rutherford County, North Carolina, and has been such superintendent for three and one half (3½) years last past. That he never stated to anyone that one half of the machinery of said plant is or could be operated by water power. That water power at said plant varies. That the greatest amount available at any time is approximately 20% of the power required for the operation of said plant and the annual average water power actually used at said plant is approximately (in round numbers) ten per cent of all the power actually used annually at said plant.

C. H. Lockman.

STATE OF NORTH CAROLINA,
County of Rutherford:

Subscribed and sworn to before me this 15th day of May 1928.

Mary Elizabeth Hames, Notary Public. My commission expires January 9, 1930. (N. P. Seal.)

AFFIDAVIT OF J. F. TIMMERMAN—Filed May 18, 1928

[Title omitted]

[fol. 72] STATE OF NORTH CAROLINA,
County of Rutherford, ss:

J. F. Timmerman, being first duly sworn, on oath deposes and says:

That at the request of complainant he examined the public records of Rutherford County relating to transfers of property and assessments thereon, and from said records ascertained the sale and purchase price and assessments of real estate, which said records show information, to wit:

The books and pages hereinafter referred to refer to books and pages of Deeds recorded in the appropriate Register's Office of Rutherford County, North Carolina.

	Sale price	1927 assessed valuation
Book 124, Page 160, shows deed dated April 6, 1927, conveying 29 acres in Cool Springs Township, for the express consideration of	$5,800	
And the 1927 assessed valuation is		$1,600
Book 124, Page 152, shows deed Dated July 25, 1925, being lots 1 and 2 in Block B known as Chimney Rock Terraces in Chimney Rock Township, for the express consideration of	1,000	
And the 1927 assessed valuation is		300
Book 124, Page 118, shows deed dated April 29, 1926, conveying lot 3 sub-division of W. C. L. Co., fronting on Charlotte-Asheville highway in Chimney Rock Township, for the express consideration of	3,000	
And the 1927 assessed valuation is		300
[fol. 73] Book 135, Page 507, shows deed dated February 10, 1927, conveying lots 15, 16, 17, 18 and 19 in Block E of Glenwood Park sub-division in Rutherfordton Township, for the express consideration of	2,200	
upon which there is a mortgage of $1,500, and the 1927 assessed valuation is		788
Book 133, Page 534, shows deed dated February 9, 1927, conveying 1 lot about ½ mile from Spindale in Rutherfordton Township, for the express consideration of	1,567	
And the 1927 assessed valuation is		1,000

	Sale price	1927 assessed valuation
Book 133, Page 536, shows deed dated February 8, 1927, conveying 23⅝ acres in Colfax Township for the express consideration of	2,008	
And the 1927 assessed valuation is		1,450
Book 144, Page 23, shows deed dated September 7, 1926, conveying 60⅔ acres in Rutherfordton Township, for the express consideration of	4,750	
and the assumption of a loan on the property of $1,750.		
Did not find record of this property being returned for taxes in 1927, but on the return of the grantor, under item of W. L. Silver, the grantee, as follows: "N. A. Harding $1,500",		
Which is assessment on the property just mentioned		1,500
[fol. 74] Book 132, Page 358, shows deed dated April 9, 1926, conveying 1 lot on east side of Main Street, north of Central Hotel building in Township of Rutherfordton, for the express consideration of	7,500	
And the 1927 assessed valuation is		2,500
Book 132, Page 393, shows deed dated April 10, 1927, conveying tract of land in the Town of Spindale south of the Charlotte-Asheville Highway, being part of the J. J. Burger lands and part of land lots 40, 41, 42 and 43 in Rutherfordton Township, for the express consideration of	3,000	
And the 1927 assessed valuation is		1,200

	Sale price	1927 assessed valuation
Book 132, Page 401, shows deed dated April, 1927, conveying 6 acres on south side of Highway No. 20 in front of B. F. Edgerton and Hoover Place in Chimney Rock Township, for the express consideration of	3,000	
And the 1927 assessed valuation is		600
Book 144, Page 68, shows deed dated March 13, 1926, conveying lot 2 in Block A of Rutherford Investment Corp., for the express consideration of	3,200	
And the 1927 assessed valuation is		600
Book A-2, Page 236, shows deed dated September 8, 1926, convey ing 1 lot and garage in High Shoals Township, for the express consideration of	18,000	
And the 1927 assessed valuation is		10,000
[fol. 75] Book 142, Page 30 shows deed dated February 22, 1927, conveying 1 lot in Town of Rutherfordton known as Wilkie lot, for the express consideration of	6,000	
And the 1927 assessed valuation is		3,000
Book 142, Page 34 shows deed dated August 30, 1920, conveying 50 acres in Colfax Township, for the express consideration of	7,117.50	
And the 1927 assessed valuation is		3,750
Book 142, Page 36 shows deed dated December 14, 1926, conveying 1 acre, in High Shoals Township, Cliffside, for the express consideration of	2,500	
And the 1927 assessed valuation is		1,600
Book 142, Page 77 shows deed dated April 19, 1927, conveying 11.22 acres in Green Hill Town-		

	Sale price	1927 assessed valuation
ship for the express consideration of	2,000	
And the 1927 assessed valuation is		540
Book 142, Page 118 shows deed dated February 28, 1927, conveying 1 lot in Forest City, Cool Springs Township, for the express consideration of	5,500	
And the 1927 assessed valuation is		3,000
Book 142, Page 125 shows deed dated February 1, 1927, conveying 1 lot in Spindale, Rutherfordton Township, for the express consideration of	6,500	
And the 1927 assessed valuation is		3,250
[fol. 76] Book 142, Page 126 shows deed dated August 10, 1926, conveying one house and lot in Forest City, Cool Springs Township, for the express consideration of	4,000	
And assumption of a loan on the property of $2,000 owing to Forest City Building and Loan Association.		
Assessment for 1927 purported to be for $2,500, but there is a notation made on the return and signed by P. A. McGregor, Owner, H. B. Doggett, List Taker, and the County Commissioners: "This return in error should be $2,000"		2,000
Book 142, Page 175 shows deed dated November 18, 1926, conveying 1 lot on East Main St., Forest City, Cool Springs Township, for the express consideration of	5,000	
And the 1927 assessed valuation is		2,500

	Sale price	1927 assessed valuation
Book 142, Page 394 shows deed dated April 1, 1926, conveying 1 lot Arlington St., Forest City, Cool Springs Township, for the express consideration of.....	6,000	
And the 1927 assessed valuation is.....		3,000
Book 142, Page 452, shows deed dated December 31, 1925, conveying 39¼ acres on Floyd's Creek in Sulphur Springs Township, for the express considera- [fol. 77] tion of.....	5,250	
The return of the grantee in said deed for the year 1926 shows total assessments on 89½ acres of $5,892, and of said $5,892 there is an item of 39¼ acres at $2,768. The 1927 return of said grantee shows 89½ acres on F. Creek at an assessed valuation of $5,692.		
On the basis of the 1926 assessment the 1927 assessment on the 39¼ acres conveyed ought not to exceed the 1926 item of.....		2,768
Book 143, Page 7 shows deed dated December 16, 1926, conveying 63-5/10 acres in High Shoals Township, for the express consideration of	4,000	
And the 1927 assessed valuation is.....		1,800
Book 143, Page 19 shows deed dated December 15, 1926, conveying 1 acre in Camp Creek Township, for the express consideration of	225	
And the 1927 assessed valuation is.....		50
Book 143, Page 42 shows deed dated December 14, 1926, conveying 4 lots North Side East Main Street in Forest City, for the express consideration of....	350	

	Sale price	1927 assessed valuation
And the 1927 return of the grantee shows 33 lots (including last above) at $15 per lot or gross of $450, which would be on the 4 lots conveyed		60
[fol. 78] Book 143, Page- 54 and 55, shows deed dated January 6, 1927, conveying 101¾ acres in Colfax Township, for the express consideration of	8,500	
And the 1927 assessed valuation is		5,500
Book 143, Page 57—shows deed dated September 16, 1925, conveying 19½ acres, Sulphur Springs Township, for the express consideration of	600	
And the 1927 assessed valuation is		360
Book 143, Page 82 shows deed dated December 21, 1927, conveying lots 36, 37 in Town of Forest City in McBee subdivision, Cool Springs Township, for the express consideration of	225	
And the 1927 return of the grantee in said deed shows 6 lots assessed at $250; on the average basis of lots covered by said assessment those covered by said deed would not exceed		82
Book 143, Page 93 shows deed dated December 16, 1927, conveying 3 acres in Rutherfordton Township, for the express consideration of	3,000	
And the 1927 assessed valuation is		1,500
Book 143, Page 97 shows deed dated August 27, 1925, conveying lot 5 on Fairview Street &		

	Sale price	1927 assessed valuation
Caroleen Road, Forest City, Cool Springs Township, for the express consideration of	1,000	
And the 1927 assessed valuation is		600
[fol. 79] Book 143, Page 99 shows deed dated January 6, 1928, conveying 3 acres in High Shoals Township, for the express consideration of	1,000	
And the 1927 assessed valuation is		650
Book 143, Page 103 shows deed dated December 27, 1927, conveying 3 lots in Forest City, for the express consideration of	10,000	
And the 1927 assessed valuation is		6,150
Book 143, Page — shows deed dated January 27, 1926, conveying 120½ acres in Rutherfordton Township, for the express consideration of	8,000	
Upon which property there is a Federal Land Bank mortgage of $2,000 and a mortgage to H. C. Elliott of $1,000, both of which were assumed,		
And the 1927 assessed valuation is		3,300
Book 143, Page 156 shows deed dated December 30, 1926, conveying 1 acre in Town of Ellenboro, for the express consideration of	300	
And the 1927 assessed valuation is		150
Book 143, Page 162 shows deed dated January 25, 1928, conveying one lot on Cherry Mt. St., Cool Springs Township, for the express consideration of	6,000	
And the 1927 assessed valuation is		4,000

	Sale price	1927 assessed valuation
[fol. 80] Book 143, Page 163 shows deed dated January 25, 1928, conveying one lot on Highway No. 20 in Forest City, Cool Springs Township, for the express consideration of	3,500	
And the 1927 assessed valuation is		1,600
Book 143, Page 167 shows deed dated February 3, 1928, conveying 1 lot No. 8 on Caroleen Road & Magnolia Street, Cool Springs Township, Forest City, for the express consideration of	1,000	
And the 1927 assessed valuation is		600
Book 143, Page 186 shows deed dated January 14, 1926, conveying 2 lots adjoining lots of Farmers Bank & Trust Co. and J. W. Piercy in High Shoals Township, for the express consideration of	2,500	
And the 1927 assessed valuation is		1,650
Book 143, Page 220 shows deed dated July 13, 1925, conveying 1 lot North Main Street, Forest City, Cool Springs Township, for the express consideration of	4,000	
And the 1927 assessed valuation is		2,000
Book 143, Page 221, shows deed dated September 26, 1921, conveying 4 lots on Yarborough Street in Forest City, for the express consideration of	4,000	
The 1927 tax assessment of the grantee in said deed shows 16 lots on Yarborough Street at the assessed valuation of $5,000, [fol. 81] which would make the assessment of the 4 lots conveyed by said deed (¼th thereof)		1,250

	Sale price	1927 assessed valuation
Book 143, Page 234, shows deed dated March 29, 1926, conveying 40 acres of land in Gilkey Township, for the express consideration of	1,600	
And the 1927 assessed valuation is		1,000
Book 143, Page 248, shows deed dated March 12, 1928, conveying 1 lot on Highway #20 near Duncan Store, Rutherfordton Township, for the express consideration of	3,000	
And the 1927 assessed valuation is		1,600
Book 143, Page 297, shows deed dated June 4, 1926, conveying lot No. 4 in Spindale, Rutherfordton Township, for the express consideration of	1,500	
And the 1927 assessed valuation is		1,000
Book 143, Page 322, shows deed dated April 13, 1928, conveying 30-80/100 acres on Bingham Branch and Stonecutter Creek, Rutherfordton Township, for the express consideration of	1,600	
And the 1927 assessed valuation is		1,000
Book 143, Page 81, shows deed dated January 7, 1928, conveying 1½ acres in Cool Springs Township, for the express consideration of	2,500	
[fol. 82] The 1927 tax assessment of the grantee in said deed shows 16 acres at the assessed valuation of $2,250, which would make the assessment of the 1½ acres conveyed by said deed		210.93
Book 143, Page 101, shows deed dated January 6, 1928, conveying lot #18 Snug Harbor Colony section Chimney Rock Township, assuming encumbrance of	2,070	

	Sale price	1927 assessed valuation
And the 1927 assessed valuation is		640
Book 143, Page 185, shows deed dated January 21, 1928, conveying 3 lots #28, 29, 30 in Town of Rutherfordton, Rutherfordton Township, for the express consideration of	4,000	
And the 1927 assessed valuation is		2,000
Book 143, Page 229, shows deed dated March 3, 1928, conveying part of lot #2 Block H on the Charlotte-Asheville Highway in Town of Chimney Rock, Chimney Rock Township, for the express consideration of	6,000	
And the 1927 assessed valuation is		3,000
Book 143, Page 289, shows deed dated March 26, 1928, conveying 6 acres Parris land near Hines store, High Shoals Township, for the express consideration of	2,000	
And the 1927 assessed valuation is		925
Book 143, Page 37 shows deed dated December 10, 1926, con- [fol. 83] veying 44½ acres ½ mile West of Hollis, N. C., Duncan Creek Township, for the express consideration of	2,000	
The 1927 tax assessment of the grantee for 313 acres states $4,537, only $795 more than 1926 without the 44½ acres		795
Book 143, Pages 46-47, shows deed dated October 2, 1926, conveying —first tract 42.3 acres, and second tract 46 acres, both on waters Big Camp Creek, Camp Creek Township, for the express consideration of	1,069	
The 1927 assessed valuation is		375

	Sale price	1927 assessed valuation
Book 141, Page 255, shows deed dated February 1, 1927, conveying lot #50, block 36, Chimney Rock Township, for the express consideration of	3,300	
The 1927 assessed valuation is		825
Book 141, Page 262, shows deed dated February 28, 1927, conveying lot #32, block 34, Chimney Rock Township, for the express consideration of	750	
And the 1927 assessed valuation is		185
Book 141, Page 266, shows deed dated March 16, 1927, conveying lot #46, block 1 in Chimney Rock Township, for the express consideration of	6,500	
And the 1927 assessed valuation is		1,625
Book 141, Page 266, shows deed dated March 23, 1927, conveying [fol. 84] 2 lots #52 and 66, Block 13, Chimney Rock Township, for the express consideration of	1,250	
And the 1927 assessed valuation is		910
Book 141, Page 266, shows deed dated April 2, 1927, conveying lot #16, B1.34 Chimney Rock Township, for the express consideration of	3,975	
And the 1927 assessed valuation is		995
Book 141, Page 272, shows deed dated April 12, 1927, conveying lot #23, Block 33, Chimney Rock Township, for the express consideration of	4,700	
And the 1927 assessed valuation is		1,175
Book 141, Page 273, shows deed dated April 5, 1927, conveying lot #1, block 25, Chimney Rock		

	Sale price	1927 assessed valuation
Township, for the express consideration of	4,600	
And the 1927 assessed valuation is		1,150
Book 141, Page 274, shows deed dated February 24, 1927, conveying lot # 36, block 1, Chimney Rock Township, for the express consideration of	9,250	
And the 1927 assessed valuation is		2,315
Book 141, Page 275, shows deed dated February 24, 1927, conveying lot #35, block 1, Chimney Rock Township, for the express consideration of	9,500	
And the 1927 assessed valuation is		2,375
[fol. 85] Book 141, Page 280, shows deed dated April 30, 1927, conveying 1 lot #15, block 33, Chimney Rock Township, for the express consideration of	3,300	
And the 1927 assessed valuation is		825
Book 141, Page 252, shows deed dated September 8, 1926, conveying lot #1, block 7, Chimney Rock Township, for the express consideration of	3,870	
And the 1927 assessed valuation is		970
Book 141, Page 251, shows deed dated September 2, 1926, conveying lot #4, block 4, Chimney Rock Township, for the express consideration of	4,500	
And the 1927 assessed valuation is		1,125
Book 141, Page 250, shows deed dated September 2, 1926, conveying lot #78, block 1, Chimney Rock Township, for the express consideration of	5,425	
And the 1927 assessed valuation is		1,355

	Sale price	1927 assessed valuation
Book 141, Page 248, shows deed dated November 26, 1926, conveying lot #12, block 34, Chimney Rock Township, for the express consideration of	3,975	
And the 1927 assessed valuation is.....		995
Book 141, Page 244, shows deed dated November 11, 1926, conveying lot #25, block 34, Chimney Rock Township, for the express consideration of	3,050	
And the 1927 assessed valuation is.....		765
[fol. 86] Book 141, Page 243, shows deed dated November 11, 1926, conveying lot #24, block 34, Chimney Rock Township, for the express consideration of	3,150	
And the 1927 assessed valuation is.....		885
Book 141, Page 242, shows deed dated November 11, 1926, conveying lot #21, block 34, Chimney Rock Township, for the express consideration of	2,750	
And the 1927 assessed valuation is.....		685
Book 141, Page 241, shows deed dated November 11, 1926, conveying lot #20, block 34, Chimney Rock Township, for the express consideration of	2,850	
And the 1927 assessed valuation is.....		715
Book 141, Page 240, shows deed dated November 11, 1926, conveying lot #19, block 34, Chimney Rock Township, for the express consideration of	3,500	
And the 1927 assessed valuation is.....		750
Book 141, Page 198, shows deed dated July 16, 1926, conveying lot #22, block 2, Chimney Rock		

	Sale price	1927 assessed valuation
Township, for the express consideration of	10,000	
And the 1927 assessed valuation is		2,500
Book 133, Page 182, shows deed dated May 31, 1926, conveying two lots on East Main Street Town of Forest City in Cool [fol. 87] Springs Township for the express consideration of	800.00	
And the 1927 assessed valuation is		500.00
Book 133, page 184, shows deed dated Jan. 26, 1926, conveying one lot on Carolina Ave. Forest City in Cool Springs Township for express consideration of	2,500.00	
Assessed valuation for 1927 is		1,500.00
Book 133, page 187, shows deed dated Aug. 6, 1926 conveying 1 lot in Coopertown containing 2 M sq. ft. in High Shoals Township for express consideration of	3,000.00	
And 1927 assessed valuation is		1,800.00
Book 133, page 191, shows deed dated Aug. 24, 1926, conveying one lot on east side Charlotte-Asheville highway for express consideration of	2,500.00	
And 1927 assessed valuation is		1,500.00
Book 133, page 192, shows deed dated July 15, 1926, conveying one lot in Coopertown near Caroleen in High Shoals Township for express consideration of	2,270.00	
And 1927 assessed valuation is		750.00
Book 133, page 223, shows deed dated Sept. 26, 1926, conveying one lot and one acre on New Hope Street Rutherfordton Township for express consideration of	6,500.00	
And 1927 assessed valuation is		4,000.00

	Sale price	1927 assessed valuation
Book 133, page 228 shows deed [fol. 88] dated Aug. 21, 1926 conveying 29.9 acres on Island Ford Road in High Shoals Township for express consideration of	4,320.55	
And 1927 assessed valuation is		2,870.00
Book 133, page 269 shows deed dated Sept. 21, 1926 conveying 3 lots in Spindale Rutherfordton township for express consideration of	2,000.00	
And 1927 assessed valuation is		1,000.00
Book 133, page 287 shows deed dated Sept. 30, 1926 conveying 8 lots in Haworth Subdivision in Green Hill Township for express consideration of $10.00 and Notes aggregating $1,500 given as purchase money	1,510.00	
And 1927 assessed valuation is		500.00
Book 133, page 299 shows deed dated Oct. 6, 1926 conveying 3 lots in Rutherfordton Township for express consideration of	500.00	
And 1927 assessed valuation is		225.00
Book 133, page 332 shows deed dated Oct. 18, 1926 conveying 1 lot in Town of Rutherfordton on Meridian & Third Sts. in Rutherfordton Township for express consideration of	2,500.00	
And 1927 assessed valuation is		1,500.00
Book 133, page 342 shows deed dated Nov. 1, 1926 conveying 142¼ acres on Broad River in [fol. 89] Sulphus Springs Township for express consideration of	5,500.00	
And 1927 assessed valuation is		3,562.00
Book 133, page 354 shows deed dated Sept. 9, 1926 conveying 2		

	Sale price	1927 assessed valuation
lots at Alexander Mills in Cool Springs Township for express consideration of	2,000.00	
And 1927 assessed valuation is		1,000.00
Book 133, page 357 shows deed dated July 15, 1926 conveying 1 lot in Highland Park Place in Town of Forest City-Cool Springs Township for express consideration of	1,000.00	
And 1927 assessed valuation is		300.00
Book 133, page 391 shows deed dated Nov. 5, 1926 conveying ⅓ acre in Town of Forest City in Cool Springs Township for express consideration of	2,500.00	
And 1927 assessed valuation is		1,500.00
Book 133, page 392 shows deed dated Nov. 17, 1926 conveying 1 lot adjoining Post Office building in Forest City in Cool Springs Township for express consideration of	8,000.00	
And 1927 assessed valuation is		5,000.00
Book 133, page 412 shows deed dated Nov. 9, 1926 conveying 11 acres in Colfax Township for express consideration of	1,725.00	
And 1927 assessed valuation is		930.00
[fol. 90] Book 133, page 437 shows deed dated Jan. 20, 1927 conveying 6.26 acres of Martin Hill lands in Union Township for express consideration of	350.00	
And 1927 assessed valuation is		100.00
Book 133, page 447 shows deed dated April 5, 1926 conveying 3.7 acres on Highway #20 in Green Hill Township for express consideration of	500.00	
And 1927 assessed valuation is		200.00

	Sale price	1927 assessed valuation
Book 133, page 449 shows deed dated Nov. 3, 1926 conveying 4.7 acres on Bills Creek Road in Chimney Rock Township for express consideration of	1,000.00	
And 1927 assessed valuation is		610.00
Book 133, page 455 shows deed dated Nov. 11, 1926 conveying lot of Hampton Lands in Town of Rutherfordton in Rutherfordton Township for express consideration of	1,230.00	
And 1927 asse-d valuation is		600.00
Book 133, page 482 shows deed dated Feb. 9, 1927 conveying 28 acres of Bridges land in Colfax Township for express consideration of	3,000.00	
And 1927 assessed valuation is		1,036.00
Book 133, page 483 shows deed dated Feb. 7, 1927 conveying 5 acres on Island Ford Road in [fol. 91] Cool Springs Township for express consideration of	1,000.00	
And the 1927 return of the grantee in said deed shows 10 acres on Island Ford Road assessed at $1,000.00; on the average basis of lands covered by said assessment land covered by said deed would not exceed		500.00
Book 133, page 498 shows deed dated Feb. 5, 1927 conveying 221 acres in Golden Valley Township for the express consideration of	3,500.00	
And 1927 assessed valuation is		2,115.00
Book 133, page 568 shows deed dated March 1, 1927 conveying 12 acres on Island Ford Road in		

	Sale price	1927 assessed valuation
Rutherfordton Township for express consideration of	1,700.00	
And 1927 assessed valuation is.....		840.00
Book 133, page 594 shows deed dated March 22, 1927 conveying 1 lot in Forest City Cool Springs Township for express consideration of	1,400.00	
And 1927 assessed valuation is.....		800.00

In the Minutes of the Board of County Commissioners of Rutherford County, N. C., of December 30, 1926, the said Commissioners adopted, as the Financial Statement of said county, a report made to them by the Treasurer of said county, whereby it is set forth that for the year 1925 the actual value of assessable property in said county was $50,000,000 and that the assessed valuation of all property in said county for said year was $33,868,021, and affiant is informed and believes that in the year 1927 the assessed valuation of all property in said county was and is on the [fol. 92] same or substantially the same relative basis of actual value of assessable property in said county as is shown by the said 1925 valuations.

That on February 9, 1928 there appeared an article in the Rutherford County News (a newspaper published in the city of Rutherfordton, in said County) the statement that "The estimated actual valuation of all property in the county last year was $60,000,000." Affiant is informed and believes that said statement accurately states information received by said newspaper from the County officials of said county and that the total assessed valuation of all taxable property in said county for said year did not exceed $36,302,627.

Affiant is informed and believes that in connection with the sale of bonds in the latter part of 1926, Rutherford County circulated, caused to be circulated or acquiesced in the circulation of printed data and representations as to the actual and assessed valuations of all taxable property in said county to the effect that the assessed valuation was and theretofore had been on approximately 60%

of the actual valuation of all said taxable property. And among other things that defendant Rutherford County, through its duly authorized agents and officers, advertised inviting bids and proposals for the bonds of Rutherford County, and in said advertisement included and set forth the assessed valuation of assessable property in said county for the year 1927 as $36,302,627, and the estimated actual value of said assessable property in said county as $60,000,000.

J. F. Timmerman.

Sworn to before me this 8 day of May, 1928. Mary Elizabeth Hames, Notary Public. My commission expires January 9, 1930. (Notary Seal.)

[fol. 93] AFFIDAVIT OF J. F. TIMMERMAN—Filed May 18, 1928

[Title omitted]

STATE OF NORTH CAROLINA,
County of Rutherford, ss:

J. F. Timmerman, first being duly sworn deposes and says that the property referred to at Book 143 of Deeds at pages 54 and 55, the Grantee is C. F. Gold, and the consideration expressed is $8500.00 and the 1927 return of Gold shows the assessed valuation to be $5500.00 for the property described in said record;

That Book 135 at page 21 of the record of deeds in the Registers Office of Rutherford County, N. C., shows a deed dated January 15, 1927 to J. F. Flack, conveying property in Camp Creek Township to said J. F. Flack for the expressed consideration of $3020, and a diligent search fails to show any return of said Flack in or for Camp Creek Township covering said property for assessment for taxes for the year 1927.

J. F. Timmerman.

Subscribed and sworn to before me this May 16, 1928. Mary Elizabeth Hames, Notary Public. My commission expires Jan. 9, 1930. (Notary Seal.)

[fol. 94] AFFIDAVIT OF J. F. TIMMERMAN—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Buncombe:

J. F. Timmerman, being first duly sworn, deposes and says:

That he has examined the 1927 assessment of Cliffside Mill. That said assessment does not contain any item or segregation or separate assessment of water power.

J. F. Timmercan. (Seal.)

Subscribed and sworn to before me this 18th day of May, 1928. J. Y. Jordan, Clerk U. S. Dist. Ct., by W. A. Lytle, Deputy Ck. U. S. Dist. Court. My commission expires —— —, ——. (U. S. Seal.)

AFFIDAVITS OF C. H. LOCKMAN AND J. F. TIMMERMAN—Filed May 18, 1928

[Title omitted]

STATE OF NORTH CAROLINA,
County of Rutherford:

C. H. Lockman, being first duly sworn, upon oath, says; That he received on or about July 3rd 1927 through the [fol. 95] Caroleen U. S. Post Office an envelope containing the original notice of which there is set forth in paragraph VI of the bill of complaint herein a copy and never at any time received personally, by mail or otherwise any other notice or document, from any officer or agent of Rutherford County, relating to the assessment and or taxation of the property of The Henrietta Mills for the year 1927.

C. H. Lockman.

Subscribed and sworn to before me this May 16, 1928. Mary Elizabeth Hames, Notary Public. My commission expires Jan. 9, 1930. (Seal.)

STATE OF NORTH CAROLINA,
County of Rutherford:

J. F. Timmerman, being first duly sworn, upon oath deposes and says, that he was in May 1927 appointed and designated as statutory agent of complainant, and ever since said date has been such agent; that he received from C. H. Lockman the document mentioned in the above affidavit of C. H. Lockman on or about July 5th 1927 and never at any time during 1927 received any other document from any Agent or Officer of Rutherford County relating to the 1927 assessment and or taxation of property of The Henrietta Mills; (Except printed circular giving statement and delinquency dates of 1927 tax).

J. F. Timmerman.

Subscribed and sworn to before me this May 16, 1928. Mary Elizabeth Hames, Notary Public. My commission expires Jan. 9, 1930. (Seal.)

[fol. 96] AFFIDAVIT OF J. F. TIMMERMAN—Filed May 18, 1928

NORTH CAROLINA,
Rutherford County:

J. F. Timmerman, being duly sworn, deposes and says: That on July 22nd, 1927, affiant had a conversation with Mr. Z. O. Jenkins, a member of the Board of Assessors or Supervisors of Rutherford County; That in this conversation affiant told Mr. Jenkins that Mr. Frazier Jones, representing the Henrietta Mills, wished to have a conference with the members of the Board or to appear before the Board with reference to the Henrietta Mills assessment. Mr. Jenkins thereupon advised that he was reasonably sure that the other members of the Board would meet Mr. Jones on July 27th and that he would call affiant and notify him after conferring with the other members: That affiant did not hear further from Mr. Jenkins and again called him over the telephone the morning of July 27th in order to make sure that the Board would meet at Caroleen or Rutherfordton, and Mr. Jenkins at this time advised affiant that the Board considered their action final and that it was use-

less for them to meet and that any further protest on the part of the Henrietta Mills would have to be made to the State Board of Raleigh;

That on the same date, to-wit, July 27th, 1927, Mr. Frazier Jones and affiant went to Rutherfordton and were unable to locate in the Court House the records of the Henrietta Mills' returns for 1927, or any protest or any record of any action thereon; That subsequently the returns were finally located in the law offices of Quinn, Hamrick & Harris across the street from the Court House; That up until July *July* 27th, 1927, affiant, from his conversation with Mr. Jenkins, understood or had the impression, that the Henrietta Mills would be given an opportunity to appear before the Board and be heard on its claim for a reduction in assessment.

J. F. Timmerman, Affiant.

[fol. 97] Sworn to and subscribed before me this the 9th day of May, 1928. Alice Geer, Notary Public. My commission expires 20 day of Apr. 1930. (Notary Seal.)

Service accepted. Copy received May 10, 1928.
Quinn, Hamrick & Harris, by Fred D. Hamrick.

Be it resolved by the Board of Commissioners for the County of Rutherford, That three notes of County of Rutherford be executed in the aggregate sum of $75,000 dated December 30, 1926, maturing November 15, 1927, and bearing interest at 4.75% interest payable at maturity. Both interest and principal payable to bearer at Chemical National Bank of the City of New York, New York. In anticipation of collection of taxes for the year 1926, and that said note be hold or hypothecated by the Board of Commissioners for the County of Rutherford and the proceeds thereof turned into the general fund of said County of Rutherford.

Be it further resolved, That the full faith and credit of the County of Rutherford be pledged to the punctual payment of the principal and interest of said note at maturity.

I, W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, do hereby certify that the foregoing

resolution is a true record of the proceedings of the above mentioned Board of Commissioners of County of Rutherford.

(Signed) W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, N. C. (Seal.)

Adopted by the Board on December 30, 1926.

[fol. 98] Financial Statement of County of Rutherford

Actual valuation for year 1925	$50,000,000.00
Assessed " " " 1925	32,868,021.00
Tax rate per $100 1.09 Floating debt	452,000.00
Total bonded debt	1,115,000.00
Gross receipts from all sources for year 1925	507,042.15
Population last government census	1,920.00
Population estimated now	38,000.00

Under what law or authority is note issued? General law.

Has there ever been any default of payment of any of the County's obligations? No.

If so, when? None. Why? None.

Is there any controversy or litigation pending or threatened concerning the validity of any bonds or notes of the County, the corporate existence or boundaries of same, or the title of the present officers to their respective offices? None.

The foregoing statement, I hereby certify to be to the best of my knowledge and belief, true and correct.

In witness hereof, I have hereunto set my hand and seal, this the 30th day of December, 1926.

Minnie F. Blanton, *Treas.* Treasurer of County of Rutherford, N. C.

North Carolina,
Rutherford County:

Personally appeared before me this day Mrs. Minnie F. Blanton, Treasurer of Rutherford County, who says that the foregoing is a correct copy of a public record in her office.

[fol. 99] This the 9th day of May, 1928.

Minnie F. Blanton, Treas. Alice Geer, Notary Public. My Commission exp. Apr. 20, 1930. (Seal.)

Be it resolved by the Board of Commissioners for the County of Rutherford, That six (6) notes of County of Rutherford be executed in the aggregate sum of $150,000, dated November 26th, 1926, maturing August 26th, 1927, and bearing interest at 4.80%, interest payable at maturity. Both interest and principal payable to bearer at Chemical National Bank of the City of New York, New York. In anticipation of collection of taxes for the year 1926 and that said note be sold or hypothecated by the Board of Commissioners for the County of Rutherford and the proceeds thereof turned into the general fund of said County of Rutherford.

Be it further resolved, That the full faith and credit of County of Rutherford be pledged to the punctual payment of the principal and interest of said note at maturity.

—, M. T. Wilkie, Clerk of Board of Commissioners for the County of Rutherford, do hereby certify that the foregoing resolution is a true record of the proceedings of the above mentioned Board of Commissioners of County of Rutherford.

(Signed) M. T. Wilkie, Clerk of the Board of Commissioners for the County of Rutherford, North Carolina.

Adopted by the Board on Nov. 22nd, 1926.

[fol. 100] Financial Statement of County of Rutherford

Actual valuation for year 1925	$50,000,000.00
Assessed " " " 1925	32,868,021.00
Tax rate per $100 1.09 Floating debt	452,000.00
Total bonded debt	1,115,000.00
Gross receipts from all sources for year 1925	507,042.15
Population last government census, 1920	
Population estimated now	38,000

Under what law or authority is note issued? General law.

Has there ever been any default of payment of any of the County's obligations? No.

If so, when? None. Why? None.

Is there any controversy or litigation pending or threatened concerning the validity of any bonds or notes of the

County, the corporate existence or boundaries of same, or the title of the present officers to their respective offices? None.

The foregoing statement, I hereby certify to be to the best of my knowledge and belief, true and correct.

In witness whereof, I have hereunto set my hand and seal, this the 22nd day of November, 1927.

(Signed) Minnie F. Blanton.

North Carolina,
Rutherford County:

Personally appeared before me this day Mrs. Minnie F. Blanton, Treasurer of Rutherford County, who says that the foregoing is a correct copy of a public record in her office.

[fol. 101] This the 9 day of May, 1928.

Minnie F. Blanton, Treas. Alice Geer, Notary Public. My com. exp. Apr. 20, 1930. (Seal.)

Be it resolved by the Board of Commissioners for the County of Rutherford, That six notes of County of Rutherford be executed in the aggregate sum of $150,000 dated February 11, 1927, maturing November 15, 1927, and bearing interest 4.40% interest, payable at maturity. Both interest and principal payable to bearer at Chemical National Bank of the City of New York, New York, in anticipation of collection of taxes for the year 1926, and that said note be sold or hypothecated by the Board of Commissioners of Rutherford County and the proceeds thereof turned into the general fund of said Rutherford County.

Be it further resolved, That the full faith and credit of County of Rutherford be pledged to the punctual payment of the principal and interest of said note at maturity.

I, W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, do hereby certify that the foregoing resolution is a true record of the proceedings of the above mentioned Board of Commissioners of County of Rutherford.

(Signed) W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, N. C. (Seal.)

Adopted by the Board on February 11, 1927.

[fol. 102] Financial Statement of County of Rutherford

Actual valuation for year 1925	$50,000,000.00
Assessed " " " 1925	32,868,021.00
Tax rate per $100 1.09 Floating debt	452,000.00
Total bonded debt	1,115,000.00
Gross receipts from all sources for year 1925	507,042.15
Population last government census, 1920	.....
Population estimated now	38,000

Under what law or authority is note issued? General law.

Has there ever been any default of payment of any of the County's obligations? No.

If so, when? None. Why? None.

Is there any controversy or litigation pending or threatened concerning the validity of any bonds or notes of the County, the corporate existence or boundaries of same, or the title of the present officers to their respective offices? None.

The foregoing statement, I hereby certify to be to the best of my knowledge and belief, true and correct.

In witness whereof, I have hereunto set my hand and seal, this the 30th day December, 1926.

W. O. Geer.

North Carolina,
Rutherford County:

Personally appeared before me this day W. O. Geer, Register of Deeds for Rutherford County, who says that the foregoing is a correct copy of a public record in his office.

Alice Geer, Notary Public. My com. exp. Apr. 20, 1930. (Seal.)

[fol. 103] Affidavit of W. S. Moore—Filed May 18, 1928

[Title omitted]

W. S. Moore, being first duly sworn, upon oath deposes and says:

That he is superintendent of Mill No. 1 of Henrietta Mills in Rutherford County, State of North Carolina, which mill

is located near Caroleen in said County; that he has been superintendent of said mill for 10 years next last past and is familiar with all of its property and effects connected with or pertaining to said plant; that affiant under the direction and supervision of T. J. Bagwell caused to be taken as of April 2, 1927 an inventory of the property of said mill shown by Exhibit A hereto attached and made a part hereof; that affiant verily believes that said inventory is true, accurate, and correct in every respect; that affiant was on May 1, 1927 and now is familiar with the physical condition of the said plant and the property connected therewith; that the equipment and machinery in said plant was on May 1, 1927 and prior thereto in a rundown and out of repair condition, and that it did not then and does not now contain up-to-date and modern equipment except to the extent of about $10,000, and practically all of the equipment and machinery at, in and about said plant had been used for a number of years immediately prior to May 1, 1927; that said plant cannot be made an up-to-date and modern plant without the installation of modern equipment (in-
[fol. 104] cluding power equipment); that changes can be made in the machinery and equipment of said plant that will improve it at the expenditure of a large sum of money, but it cannot be put in a first class condition or modernized except by the installation of new and present-day equipment and machinery; that even with a large expenditure of money, repairing and reconditioning said plant and equipment therein, the same cannot be made an up-to-date, modern plant except by the method above stated.

W. S. Moore.

Subscribed and sworn to before me this 5th day of May, 1928. J. L. Harwright, Notary Public. My comm. expires Aug. 26, 1928. (Seal.)

Service accepted and copy received, May 10, 1928.
Quinn, Hamrick & Harris, by Fred D. Hamrick.

AFFIDAVIT OF T. J. BAGWELL—Filed May 18, 1928

[Title omitted]

[fol. 105] T. J. Bagwell, being first duly sworn, on oath deposes and says:

That he was for the period from 1910 to 1919, both inclusive, superintendent and operated a cotton textile mill (consisting of real estate, mill village, mill and mill equipment) at Spartanburg, S. C., and for eight years was the superintendent of and operated a cotton textile mill (consisting of real estate, mill village, mill and mill equipment) at Asheville, North Carolina, and in addition assisted other superintendents for the last eight years or more in matters pertaining to the operation of cotton textile mills (consisting of real estate, mill village, mill and mill equipment) located in the States of South Carolina and Alabama.

That since October 1st, 1926 he has assisted the superintendents in matters pertaining to the operation of cotton textile mills of the Henrietta Mills in Rutherford County, North Carolina, and is and has been familiar with the condition of said plants at all times since October 1, 1926; That said plants have been and were on May 1, 1927 in a run-down and out-of-repair condition; That the equipment in said plants have evidently been in use for a long period of time, to-wit: many years. That the said plants of The Henrietta Mills in or in the vicinity of Caroleen, in Rutherford County, North Carolina, cannot be made up-to-date modern plants without the installation of modern equipment (including power equipment) therein, and scrapping practically all of the equipment in said mills and plants.

That changes can be made in the machinery and equipment of said plants that will improve them by the expenditure of a large amount of money, but they, or either of them, cannot *me* put in first-class condition except by the installation of new modern and present-day equipment; that even with the expenditure of a large amount of money in repairing and reconditioning said plants and equipment therein same, or either of them, cannot be made up-to-date modern plant or plants save and except by the method above stated.

[fol. 106] T. J. Bagwell.

Subscribed and sworn to before me this 9th day of May, 1928. Mary Elizabeth Hames, Notary Public. My comm. expires Jan. 9, 1930. (N. P. Seal.)

Service accepted, copy received, May 10, 1928.
Quinn, Hamrick & Harris, by Fred D. Hamrick.

AFFIDAVIT OF L. V. ANDREWS—Filed May 28, 1928

[Title omitted]

L. V. Andrews, being first duly sworn, upon oath deposes and says:

That he is superintendent of the cotton mill at Reidsville, North Carolina, and for about five years prior to October 1, 1926, he was superintendent of a cotton textile mill consisting of real estate, mill village, mill and mill equipment in South Carolina, and that he has been employed in and around cotton textile mills (consisting of real estate, mill village, mill and mill equipment) for the past twenty-two years; that in September and October, 1926, he did examine the plants of Henrietta Mills in Rutherford County, State of North Carolina, and from said examination became familiar with the condition thereof; that said plants [fol. 107] consist of real estate, mill village, mill and mill equipment; that in September and October, 1926 he assisted Allen Jones in making or checking the list of inventory of the property, including machinery and equipment at said plants:

That the two plants of Henrietta Mills in Rutherford County, North Carolina, in September and October, 1926, were in a run-down condition; that neither of said plants contained, at that time, up-to-date and then modern equipment; that all the equipment and machinery in said plants and each of them, at said time, appeared to have been used for a number of years prior to October, 1926, and said plants of Henrietta Mills at and in the said Rutherford County, North Carolina, could not be made up-to-date, modern plants or plant without the installation of modern equipment therein (including power equipment); that changes could be made in the machinery and equipment of said plants that would improve them by the expenditure of a large amount of money, but they could not be put in a first class condition or actually modernized except by the installation of new and present-day equipment and machinery; that even with a large expenditure of money, repairing and reconditioning said plants and equipment therein, the same or either of them cannot be made up-to-date, modern plant or plants save and except by the methods above stated.

L. V. Andrews.

Subscribed and sworn to before me this 4th day of May, 1928. Chas. T. Somers, Notary Public. My comm. expires March 12, 1930. (Seal.)

Service accepted. Copy received May 10, 1928.
Q. H. & H., by F. D. Hamrick.

[fol. 108] AFFIDAVIT OF A. F. BEACHBOARD—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

Affidavit

A. F. Beachboard, being first duly sworn, deposes and says: that he is a citizen and property owner of Rutherford County, North Carolina, and that he has lived in said County for a period of 25 years; that he is actively engaged in the Grocery business; that he is familiar with municipal and other tax exempt properties in Rutherford County, and that according to his best information and belief, the municipal, school, church, and all other tax exempt property in Rutherford County does not exceed in valuation, the sum of $3,500,000, that he is familiar with the property values, generally, and the valuation of the same by the taxing authorities of the said County; that the general average basis of assessment has been, and is about 60% of the true and actual value in most of such property, but in some instances the property of general tax payers is grossly over-assessed, and in excess of the said 60%; that aside from the tax exempt property, the assessed valuation of property in Rutherford County is approximately $36,000,000.00, and the estimated actual valuation is approximately $60,000,000.00, and that in affiant's opinion said figures correctly report the valuation of the property in Rutherford County.

A. F. Beachboard, Affiant.

Sworn to and subscribed to before me this 16th day of May, 1928. L. C. Powell, Notary Public. My comm. expires Sept. 15, 1928. (N. P. Seal.)

[fol. 109] AFFIDAVIT OF R. L. REINHARDT—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

Affidavit

R. L. Reinhardt, being first duly sworn, deposes and says: that he is a citizen and property owner of Rutherford County, North Carolina, and that he has lived in said County for a period of 38 years; that he is actively engaged in Drug business; that he is familiar with municipal and other tax exempt properties in Rutherford County, and that according to his best information and belief, the municipal, school, church, and all other tax exempt property in Rutherford County does not exceed in valuation, the sum of $3,530,000.00; that he is familiar with the property values, generally, and the valuation of the same by the taxing authorities of the said County; that the general average basis of assessment has been and is about 60% of the true and actual value in most of such property, but in some instances the property of general tax payers is grossly overassessed, and in excess of the said 60%; that aside from the tax exempt property, the assessed valuation of property in Rutherford County is approximately $36,000,000.00 and the estimated actual valuation is approximately $60,000,000.00, and that in affiant's opinion said figures correctly reflect the valuation of property in Rutherford County; that in affiant's opinion the following is an approximately correct estimate of the value of tax exempt properties in Rutherford County to-wit:

School Valuation	$1,500,000.00
Court House	250,000.00
Jail	75,000.00
County Home	75,000.00
Church Property	750,000.00
Forest City Municipal Property	300,000.00
Rutherfordton Municipal Property	250,000.00
[fol. 110] Spindale Municipal Property	200.000.00
Rutherford Hospital	100,000,00
Government Property in Rutherfordton	30,000.00
	$3,530,000.00

R. L. Reinhardt, Affiant.

Sworn to and subscribed before me this 17th day of May, 1928. L. C. Powell, Notary Public. My comm. expires Sept. 15, 1928. (N. P. Seal.)

Filed May 18, 1928

Affidavits in form similar to the foregoing affidavit of R. L. Reinhardt, with the exception as to their businesses and periods of living in Rutherford County, and containing the same figures as to valuation, were made by A. B. Flack, F. B. Harrill, G. C. McDaniel, J. C. Johnson and L. C. Lowrance.

AFFIDAVIT OF J. F. TIMMERMAN—Filed May 18, 1928

STATE OF NORTH CAROLINA,
Rutherford County:

J. F. Timmerman, being duly sworn, deposes and says:

That affiant was present at a hearing before the State Board of Assessment on October 19th, 1927; that at said [fol. 111] hearing the Henrietta Mills requested the Board to appoint some competent person, resident of North Carolina, to make an appraisal of the property under consideration with the right to either party to examine or cross-examine such appraisal upon and after a report to the Board, and offered to pay one-half of the expense of such appraisal, which procedure was opposed by the County of Rutherford and the Board declined to adopt or pursue said procedure, and the Board determined that in the absense of an agreement to that procedure by the County of Rutherford such suggested procedure could not be followed.

Thereupon the Henrietta Mills offered to pay the entire expense of said appraisal if the procedure above outlined and requested by the Henrietta Mills be followed, which procedure was again opposed by Rutherford County and the Board declined to adopt the same

Thereupon the Henrietta Mills moved the Board for a continuance of the hearing until the Henrietta Mills could

secure an appraisal by Professor Nelson, Textile Expert, of North Carolina State College, and upon such appraisal made by Professor Nelson, the same be filed by the Henrietta Mills, and either party could have the right to examine or cross-examine Professor Nelson, and the Henrietta Mills offered to pay the expense of such appraisal by Professor Nelson, to be secured and procured by the Henrietta Mills, and when secured filed with this Board and the County opposed said motion and procedure and the Board after consideration of said motion and suggested procedure overruled the motion and declined to adopt said procedure; all of which action and inaction on the part of the Board were excepted to by the Henrietta Mills.

(Signed) J. F. Timmerman, Affiant.

Sworn to and subscribed before me this the 9 day of May, 1928. Alice Geer, Notary Public. My commission expires 20 day of April, 1930. (N. P. Seal.)

[fol. 112] AFFIDAVIT OF J. F. TIMMERMAN—Filed May 18, 1928

NORTH CAROLINA,
Rutherford County:

J. F. Timmerman, being duly sworn, deposes and says: That he is employed by the Henrietta Mills and has been so employed for about a year; that on or about the 25th day of August, 1927, he went to the Court House of Rutherford County, in Rutherfordton, in company with the Company's Counsel, Mr. Willis Smith, of Raleigh; That he and Mr. Smith first conferred with Mr. W. O. Geer, who is the Register of Deeds for Rutherford County and Clerk to the Board of County Commissioners, and asked to see the records of the Board Meetings; that the said Clerk of the Board was unable to produce any minutes of any meetings held either on July 2nd or on the second Monday in July, to-wit, the 11th, and said Clerk told affiant and Mr. Smith that a young lady, Miss Willard Powers, had been acting as Secretary to the Board since July 1st and had made such records of Board meetings as had been made;

That affiant and Mr. Smith then talked to the said Miss Powers and asked to be shown the records of the minutes of the Board of Commissioners and of the Board sitting as a Board of Equalization; That said minutes which were shown to affiant failed to disclose that any meeting had been held either on the 2nd day of July or on the second Monday in July, to-wit, the 11th; That the records shown affiant by Miss Powers subsequent to the June meetings showed that meetings had been held on July 5th, 6th, 7th, 13th, 15th, and 18th, and that the next meeting thereafter was on August 2nd and 3rd. That an examination of all these minutes failed to show that an equalization order had been made on July 11th, as contemplated by law; That both the Clerk of the Board, the said W. O. Geer, and the Secretary of the Board, Miss Willard Powers, disclaimed any knowledge of any equalization order having been made; [fol. 113] That affiant carefully examined all of the records of the minutes of the County Commissioners from July 1st up to the date of the examination, which was on August 24th or 25th, and that there was no record of any equalization order having been made, or of any proceeding by the Board of County Commissioners sitting as a Board of equalization;

That later in the day, after affiant and Mr. Smith had discussed the matter with the Chairman of the Board of County Commissioners, affiant had another conversation with Miss Powers who at that time stated that she did not have any records of any minutes of the County Commissioners sitting as a Board of Equalization, but that she then did have some recollection of a meeting having been held, the time of which was uncertain, and that she had a few short-hand notes which would tell about this meeting; that they then asked her to read the notes and she stated she could not locate them and did not know where they were at that time, but that the notes did contain some reference to some cases that had been considered by the Board, but she did not have an itemized list of the cases;

That at the time of affiant's interview with Mr. Geer and Miss Powers the minutes of Board of Commissioners had already been recorded up to and through July 18th, and no mention was contained in any of these minutes about any equalization order or any hearings in connection therewith.

J. F. Timmerman.

Sworn to and subscribed before me this the 9th day of May, 1928. Alice Geer, Notary Public. My commission expires 20 day of April, 1930. (Notary Seal.)

[fol. 114] "EXHIBIT A"—Filed May 18, 1928

STATE OF NORTH CAROLINA,
Rutherford County:

At a meeting of the Board of Commissioners for the County of Rutherford held in the courthouse at Rutherfordton on Thursday, the 30th day of December, 1926, pursuant to adjournment from meeting held on the — day of ——, 1926, of which meeting all of the commissioners had due and legal notice, there were present the following Commissioners: W. G. Harris, Chairman, and G. E. Morgan, Commissioner: and absent, G. W. Rollins, Mr. Rollins having been unable to attend on account of sickness.

The following resolution was, on motion of G. E. Morgan, seconded by W. G. Harris, passed:

Be it resolved by the Board of Commissioners for the County of Rutherford, That three (3) notes each for the sum of Twenty-five Thousand ($25,000) Dollars, dated December 30th, 1926, and made payable to bearer at the Chemical National Bank in the city of New York and maturing on the 15th day of November, 1927, to be executed by the County of Rutherford; said notes to draw interest at the rate of four and seventy-five(4.75%) hundredths percentum per annum from date and said notes being in renewal of like notes of the County heretofore issued; the same being in anticipation of collection of taxes for the year 1926, and that said notes be sold or hypothecated by the Board of Commissioners for the County of Rutherford and the proceeds therefrom turned into the general fund of said County of Rutherford.

Be it further resolved, That the full faith and cerdit of the County of Rutherford be pledged to punctual payment of the principal and interest of said notes at maturity.

[fol. 115] I, W. O. Geer, Clerk of the Board of Commissioners for the County, do hereby certify that the foregoing is a true record of the proceedings had at a meeting of the

Board of Commissioners for the County of Rutherford on the 30th day of December, 1926.

W. O. Geer, Clerk to the Board or Commissioners for the County of Rutherford, North Carolina.

"Be it resolved by the Board of Commissioners for the County of Rutherford, That three notes of County of Rutherford be executed in the aggregate sum of $75,000, dated December 30th, 1926, maturing November 15th, 1927, and bearing interest at 4.75% interest payable at maturity. Both interest and principal to bearer at the Chemical National Bank of the City of New York, New York. In anticipation of collection of taxes for the year 1926 and that said note be sold or hypothecated by the Board of Commissioners for the County of Rutherford and the proceeds thereof turned into the general fund of said County of Rutherford.

Be it further resolved, That the full faith and credit of the County of Rutherford be pledged to the punctual payment of the principal and interest of said note at maturity.

I, W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, *to* hereby certify that the foregoing resolution is a true record of the proceedings of the above mentioned Board of Commissioners of the County of Rutherford.

W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, N. C. (Seal Rutherford Co. Register of Deeds, North Carolina.)

Adopted by the Board on December 30th, 1926.

[fol. 116] Financial Statement of County of Rutherford

Actual valuation for year 1925	$50,000,000.00
Assessed " " " 1925	32,868,021.00
Tax rate per $100	1.09
Floating debt	452,000.00
Total Bonded debt	1,115,000.00
Gross receipts from all sources for year 1925	507,042.15
Population last government census, 1920	.....
Population estimated now	38,000

Under what law or authority is note issued? General law.

Has there ever been default of payment of any of the County's obligations? No.

If so, when? None. Why? None.

Is there any controversy or litigation pending or threatened concerning the validity of any bonds or notes of the County, the corporate existence or boundaries of same, or the title of the present officers to their respective officers? None.

The foregoing statement I hereby certify to be to the best of my knowledge and belief, true and correct.

In witness whereof I have hereunto set my hand and seal, this the 30th day of December, 1926

—— ——, Treasurer of Rutherford County, N. C.
(Seal.)

Immediately following the above is a record of the minutes of the Board of Commissioners of Rutherford County held in the courthouse at Rutherfordton on Thursday, the 11th day of February, 1927, and immediately after the minutes of the latter meeting there appears the following certificate of W. O. Geer, Clerk:

"I, W. O. Geer, Clerk of the Board of Commissioners for the County of Rutherford, hereby certify that the foregoing resolution is a true record of the proceedings of [fols 117 & 118] the above mentioned Board of Commissi-ners of County of Rutherford.

(Signed) W. O. Geer, Clerk of Board of Commissioners for the County of Rutherford, N. C. (Seal Rutherford Co. Register of Deeds, N. C.)"

Adopted by the Board on February 11, 1927.

Immediately following the last mentioned certificate there again appears on the record book a copy of the Financial Statement above referred to.

(Here follows photostatic copy of tax return and notice, side folios 119 and 120)

[fol. 121] Rutherfordton, Rutherford County.

We, the undersigned, George Biggerstaff, Z. O. Jenkins and C. F. Geer, County Supervisors for Rutherford County,

RUTHERFORD COUNTY, N. C., MAY 1, 1927

BLANK FOR LISTING REAL ESTATE AND PERSONAL PROPERTY

Township High Shoals Name The Henrietta Mills

Special School District ✓ Mail Address Caroleen, N.C.

Race: White—Negro. Age for Poll Tax ✓

REAL ESTATE OUTSIDE

No. Acres	LOCATION	VALUE
1047½		56,575
	Machinery, Bldgs Tenements, Etc as per list attached	2,067,140 ~~1,537,125~~ 2,124,235
	TOTAL REAL ESTATE OUTSIDE	~~3,593,715~~

REAL ESTATE INSIDE

No. of Lots	LOCATION	VALUE
	TOTAL REAL ESTATE INSIDE	

IMPORTANT
PLEASE GIVE THIS INFORMATI

Real Estate Sold Since May 1st, 192
to Whom.

None

Real Estate purchased Since May 1st,
and from Whom.

None

Were Any Structures, Exceeding $1
Value, Erected, or Destroyed, on any
Property owned by you, between May 1st,
and May 1st, 1927?

If so, give particulars and value.

No

Apr. 2

N. C., MAY 1, 1927

STATE AND PERSONAL

TY

The Henrietta Mills, Inc.

Address Caroleen, N.C.

✓

IMPORTANT
PLEASE GIVE THIS INFORMATION

Real Estate Sold Since May 1st, 1926, and to Whom.

None

Real Estate purchased Since May 1st, 1926, and from Whom.

None

Were Any Structures, Exceeding $100 in Value, Erected, or Destroyed, on any Real Property owned by you, between May 1st, 1926, and May 1st, 1927?

If so, give particulars and value.

No

PERSONAL PROPERTY

Value of Buildings on Leased Land	None
True Cash Value of Merchandise [illegible] 1927.	5073 6
True Cash Value of all Fixtures, May 1st, 1927.	
True and Actual Value of All Manufactured Articles [illegible] 1927.	1109 47
True and Actual Value of All Articles in Any Process of Manufacture [illegible] 1927.	1265 42
True and Actual Value of All Machinery not Attached to Realty May 1st, 1927.	1 [illegible] 96
Cotton, Grain and Other Farm Products, not produced by Taxpayer on Hand [illegible] 1927.	2157 02
Stone, Brick, Lumber and Other Building Material on Hand May 1st, 1927.	None
Office Furniture.	500
Fire Proof Safes.	200
Typewriters—Dictaphones.	50
Adding Machines.	100
Cash Registers—Scales.	1000
Billiard and Pool Tables.	
Meat Market Equipment.	
Barber Shop Equipment.	
Motor Trucks—Tractors.	1500
Motor Cycles—Bicycles.	500
Automobiles	
Pianos—Organs	
Victrolas—Radios	2175 [illegible]
Diamonds and Jewelry.	
Guns, Pistols, etc.	
Money in Hand (Not in Banks).	
Horses No.	
Mules No.	
Jacks—Jennets No.	
Sheep No.	
Goats No.	
Hogs No.	
Milk Cattle No.	
Other Cattle No.	
Dogs Male ; Female	
Number feet lumber on hand and value . . . . No. Feet	
Value all logs . No. Feet	
Value all ties . . . . No.	
Value staves, posts, building and heading blocks	
Acid wood, cut and piled on premises or right-of-way, No. Cords	
Pulp wood, cut and piled on premises or right-of-way, No. Cords	
Tan-bark, cut and piled on premises or right-of-way, No. Cords	
Poles, cut and piled on premises or right-of-way . . No. Poles	

$300 EXEMPTION ALLOWED

Mowers—Reapers $	
Wagons—Trucks $	
Watches—Clocks $	
Silverware $	
Sewing Machines $	
Household and Kitchen Furniture $	
Wearing Apparel $	
Literary and Scientific Instruments $	
Tools of Mechanics $	
All Other Agricultural Machinery and Implements $	
TOTAL $	
Less Exemption	300 $
TOTAL PERSONAL PROPERTY	

SOLVENT CREDITS

True and Actual Value of all Bonds (Other than N. C. State or United States).	None
Deposits in Banks, Trust Companies, or with any Individual, Firm or Corporation, and all Certificates of Deposits, Certified Checks Held Against any of the Above, in or out of State [illegible] 1927. Apr 2 Bank & Trust Co.	10933
Amount and Value of all Notes, Secured by Deed of Trust, Mortgage or Otherwise, or Unsecured in or out of the State, as Follows:	None
Amount of all Claims, Demands, Accounts, and Bills Receivable Secured or Unsecured, Whether Debtor Resides in or out of State.	
True Value of all Cotton, Grain, and Other Farm Products in Your Hands as Original Producer, and Held Temporarily for Market.	None
All Sums and Amounts Due from any Person, Firm, or Corporation, whether the Debtor Resides in or out of State, not Enumerated Above.	6822

DEDUCTIONS FROM SOLVENT CREDITS

Amount of Book Accounts and Bills payable You Owed May [illegible] 1927. Apr. 2	993 100
Bona Fide Notes, Claims or Demands outstanding on May 1st, 1927.	
TOTAL DEDUCTIONS	993 100
NET SOLVENT CREDITS	None

SUMMARY
(For Office use only)

ALL PROPERTY

Total Personal Property	5135 84
Net Solvent Credits	
Total Personal Property and Solvent Credits	
Total Real Estate	21242 35
Grand Total of all Property	26378 19

STATE OF NORTH CAROLINA
County of Rutherford

I do solemnly swear (or affirm) that the above and foregoing listed property is a full, true and complete list of all and each kind of property owned by me or under my control as agent, guardian, personal representative, or otherwise, in High Shoals Township, Rutherford County, and that I have not neglected to list for taxation for the year all of each and every kind of property of which I am the owner or of which I have control as agent, guardian, personal representative, or otherwise, in the County of Rutherford, State of North Carolina. That I have made full and true return of my income as required by law, and that I have not in any way connived at the valuation or evasion of the requirements of law in relation to the assessment of property for taxation; so help me, God.

THE HENRIETTA MILLS

[signature]
TREASURER

Subscribed and sworn (or affirmed) to before me, this 3rd day of [illegible], 1927.

[signature]
Notary Public

NOT [illegible] Taker.
KINGS [illegible] KINGS COUNTY
N Y [illegible] NO 9144
[illegible] NO. 925

G. O. Holland, Wister Bridges and R. E. Walls, assistant Assessors for High Sholes Township, respectfully find that the attached abstract of the Henrietta Mills Inc. Should be amended and changed so that in the abstract of Real Estate the following values will appear:

1047½ acres land	56,575
Machenery, Buildings, Tenement Houses	1,317,193
And that the aggregate value of Real and personal property shown on said abstract shall be accordingly insreased, so that the total shown by said abstract will be of May 1, 1927	2,637,819

And we do respectfully certify the foregoing as a part and parcel of said abstract, this the 2nd day of July, 1927.

George Biggerstaff, County Supervisors. Z. O. Jenkins. County Supervisors. C. F. Geer. County Supervisors. G. O. Holland, Assistant Assessors for High Sholes T'p. R. E. Wall, Assistant Assessors for High Sholes T'p. Wister Bridges, Assistant Assessors for High Sholes T'p.

Copy mailed to Henrietta Mills July 2nd, 1927.

[fol. 122] AFFIDAVIT OF W. G. HARRIS—Filed May 18, 1928

STATE OF NORTH CAROLINA,
Rutherford County:

W. G. Harris, a citizen of Rutherford County of lawful age, first being duly sworn, deposes and says:

That to the best of his information and belief the attached prospectus giving information as to the physical property and assets of The Henrietta Mills, was used by the Independent Trust Company, of Charlotte, N. C., agent for The Henrietta Mills, in the negotiation and sale of an issue of $650,000.00 of 8 per cent. Cumulative Preferred Stock of The Henrietta Mills, and that said prospectus was prepared from information supplied the Independence Trust Company by the agents and servants of The Henrietta Mills.

And further this deponent sayeth not.

W. G. Harris, Affiant.

Subscribed and sworn to before me this the 14th day of May, 1928. Logna B. Logan, Notary Public. My commission expires on the 26 day of Jan'y, 1930. (Seal.)

The Henrietta Mills, Caroleen, N. C.

$650,000.00

8 per Cent. Cumulative Preferred Stock, par Value $100 per Share

The Henrietta Mills has authorized, to be issued January 1, 1922, $650,000.00 of 8 per cent Cumulative Preferred [fol. 123] Stock for the purpose of providing money to pay, without interfering with working capital, the last two instalments against the purchase, by the Henrietta Mills, of the Cherokee Falls Manufacturing Company, of Cherokee Falls, S. C.

The Henrietta Mills has no funded debt, and no mortgage or other lien can be placed on the property while this stock is outstanding except with the consent of the owners of 75 per cent of this issue of preferred stock. In case of liquidation or dissolution of the corporation while any of this preferred stock is outstanding the holders thereof shall be entitled to be paid par value with any accrued unpaid dividends thereon out of the assets of the corporation, ahead of any other stockholders. Dividends are cumulative, and in the event of dividends on this preferred stock falling in arrears for two years the preferred stock shall have the same voting power as the common stock, until all accumulated dividends upon preferred stock shall have been fully paid. This stock is retirable at the option of the company at any interest date at $105 per share.

It has been arranged for the 8 per cent dividend to be paid in four quarterly installments of 2 per cent each on the first day of April, July, October and January.

This stock is exempt from North Carolina property tax and the dividends are exempt from normal Federal income tax, (and from North Carolina income tax).

The Henrietta Mills was organized in 1887, and from that time has been one of the most successful and substantial cotton manufacturing companies in the South. The

Henrietta trademark export brands are favorably known in every market of the world where American goods are sold, and they are now moving in a very substantial way. Their domestic goods and yarns enjoy an enviable reputation in the markets of the United States. The business was organized by Mr. S. B. Tanner and his associates, and Mr. S. B. Tanner is now president and active head of the business. The Henrietta Mills has never failed to pay dividends in any year since beginning operations.

The Cherokee Falls Manufacturing Company, which will become a part of the Henrietta Mills upon the completion of this financing was organi-ed in 1882 by Messrs. J. C. Plonk and W. P. Roberts and associates, and has a record [fol. 124] closely paralleling that of the Henrietta Mills. Cherokee Falls has paid dividends every year except for the two-year period following the destruction of the plant by fire in 1902.

The properties of the Henrietta Mills, consisting of Mill No. 1 at Henrietta, N. C., and Mill No. 2 at Caroleen, N. C., and also the property of the Cherokee Falls Manufacturing Company, stand behind this issue of preferred stock. All three plants are in the best condition, practically all of the early machinery having been replaced during the last five or six years with modern equipment. All three mills, located on Broad River, have valuable developed water powers which furnish a large part of their power, the Cherokee Falls plant being driven entirely by water and the two Henrietta plants by water power supplemented by modern steam plants and secondary power from the Southern Power Company.

In figures, the three plants may be described as follows:

	Henrietta No. 1	Henrietta No. 2	Cherokee Falls	Total
Spinning Spindles	26,700	48,416	28,020	103,136
Twister Spindles	944	.....	5,020	5,964
Looms	710	1,059	500	2,269
Acres Land	278	771	2,618	3,667
Operatives' Cottages	176	218	118	512
Developed Waterpower H. P.	1,100	800	1,500	3,400

The mill buildings are all approved slow burning mill construction, fully equipped with automatic fire protection systems, each mill has ample sprinklered warehouses, the villages are a source of pride in the sections in which they

are located. The best school and church facilities are available and all the mills are noted for the extraordinarily high class, intelligence and efficiency of their operatives, most of whom have been at these mills for years. Each cottage has a garden plot and the gardens are a source of interest and profit to the employees.

On tax assessment valuation these properties are worth [fol. 125] $3,405,409.00. They are covered by fire insurance totaling $5,627,240.00. On a valuation of $30.00 a spindle, which mill experts consider very conservative for these mills and far below replacement value, their value is $3,090,600.00, or nearly five times the par value of this issue of preferred stock. In addition to this the two mills showed as of Oct. 30, this year net cash assets, above all liabilities, of $689,461, or more than enough to retire this issue of preferred stock. As of the same date the surplus and reserve accounts of the Henrietta Mills amounted to $2,220,779.00. The common stock of the Henrietta Mills, the only stock of the company other than this authorized preferred issue, is only $675,000.00, so it might be said that three-fourths of all the plant investment and all the working capital have been provided from earnings, and in addition substantial dividends have always been paid.

We will have for sale the entire issue of $650,000.00 and offer, subject to prior sale, $200,000.00 of this at par, for delivery January 1st, 1922. Deliveries made after January 1st, 1922, will be at par plus accrued interest.

We believe this to be the most desirable preferred stock ever offered by a Southern Cotton Mill.

Independence Trust Co., Charlotte, N. C.

AFFIDAVIT OF W. G. HARRIS—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

W. G. Harris, a citizen and resident of Rutherford County, of lawful age, first being duly sworn, deposes and says:

That he is now Chairman of the Board of Commissioners for the County of Rutherford and has been for the past

six years; that in 1920 he was a member of the re-assessment board for Rutherford County and that during said year 1920 the State of North Carolina, in reassessing the value of real and personal property over the State of North [fol. 126] Carolina and especially in re-assessing the value of mill buildings and equipment, employed experts and that these experts came to Rutherford County and assessed the value of the physical property of The Henrietta Mills at $2,400,000; that your affiant further states that these experts were sent to Rutherford County by the State Tax Commission of North Carolina; that the valuation of said property by said experts was accepted by the Board of Assessors for Rutherford County, and that said valuation placed by said experts on the physical property of The Henrietta Mills and other mills in Rutherford County has been accepted by the board of assessors of Rutherford County as the correct valuation of said mills, save and except as said valuation may have been changed from time to time by new construction at said mills, with only this exception: That in 1921 a general order was made by the Board of Commissioners for Rutherford County reducing all property in Rutherford County ten (10%) per cent, which has applied to the mills the same as to property in general.

Your affiant further states that on the 2nd Monday in July, to-wit, July 11th, 1927, the Board of Commissioners met in Rutherford County as an equalization board and heard seventy complaints; that The Henrietta Mills did not at said time file with the said Board any exceptions to the report of the Township Assessors and Supervisors, which had been mailed to the said The Henrietta Mills on July 2nd, in which the valuation of real estate and machinery as shown on the tax return made out by The Henrietta Mills had been increased from $1,373,768.00 to $2,124,235.00; that the Board of Supervisors, composed of George Biggerstaff, Z. O. Jenkins and C. F. Geer, and the Board of Commissioners for the county of Rutherford, composed of W. G. Harris, G. W. Rollins and G. E. Morgan, convened as a Board of Equalization and Review at Rutherfordton, N. C., July 11, 1927, after due notice as provided by law, and heard complaints beginning with the 11th day of July, 1927, and ending on the 15th day of July, 1927, and that in said

meeting they adopted the findings of the County Board of Supervisors with the exceptions noted in the seventy cases heard and disposed of during their sittings; and your affiant further states that neither The Henrietta Mills nor any [fol. 127] official or representative thereof appeared before the County Board of Supervisors and the Equalization Board in person, nor did they file any exceptions or objections until after the hearings of said Board had been terminated on July 15th and the order hereinabove referred to made.

Your affiant further states that before said hearings were begun that a notice was published in each of the three weekly newspapers published in Rutherford County, a copy of said notice being hereto attached and made a part of this affidavit.

That after the hearings had terminated and the order hereinabove referred to had been made, the Board of Commissioners for the County of Rutherford received on the 19th day of July, 1927, the following exceptions filed by The Henrietta Mills:

"In the Matter of the Listing, Assessment, and Taxation of the Henrietta Mills for the Year 1927

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF RUTHERFORD

"To the County Supervisors of Rutherford County, North Carolina:

"The Henrietta Mills respectfully complains of the valuation for taxation of its property for the year 1927 in the following respects, to-wit:

I. That the purported valuation fixed for personal property is $1,264,051., that is, the difference between $2,637,819. mentioned in your letter of July 2, 1927, and $1,373,768. set forth in the list of The Henrietta Mills dated April 2, 1927, under item No. 1, (being land, machinery, buildings, tenaments, etc.) is arbitrary, greatly excessive, unreasonable and not in accordance with the actual, true, cash or market value, or value in money, of the personal property, as shown by Items 11 to 82 inclusive of the list of the taxpayer (The Henrietta Mills) dated April 2, 1927.

II. That the purported valuation and any assessment of personal property covered by items 11 to 82, inclusive, at [fol. 128] $1,264,051, is arbitrary, excessive, unreasonable, unjust and illegal to the extent that it exceeds $513,584., and to said extent exceeds the actual, true, cash and/or market value, and/or value in money of said property.

III. That the listing furnished by The Henrietta Mills to the Tax Lister and said Board truly sets forth the actual, true, cash and market value and value in money of personal property, as shown by Items 11 to 82 inclusive of the said list of The Henrietta Mills, and any valuation and/or assessment in excess of the aggregate of such valuations, to-wit: $513,584, is illegal under the Constitution and Laws of the State of North Carolina and the Federal Constitution, and any assessment in excess of said sum of $513,584. would be a taking of the property of The Henrietta Mills without due process of law and not an assessment or fixing of valuations on the basis of other property in said County of Rutherford, and not an equal protection under the law, and contrary to the provisions of the Constitution of the United States, and particularly Article V and Sec. 1 of Article XIV of the amendments to said Constitution.

IV. That the valuation and/or assessment of the personal property, as shown by Items 11 to 82 inclusive of the said list of The Henrietta Mills, at any valuation in excess of that contained in the said list furnished by The Henrietta Mills to the Listing Officer and this Board, to-wit: the sum of $513,584., would be a valuation and assessment in excess of the fair, actual, true cash and/or market value or value in money of said personal property (as shown by Items 11 to 82 inclusive of the said list) and to the extent of such excess would be unequal taxation and unequal protection of law and would be taxation at a much higher rate and valuation than for other property of the taxpayer in the said County of Rutherford, State of North Carolina, and would result in and be an arbitrary assessment of the property of The Henrietta Mills at such excessive sums and amounts as hereinbefore stated.

Dated July 18, 1927.

The Henrietta Mills, by H. M. Stephens, Agent and Attorney."

[fol. 129] and thereafter on July 29th received a similar notice; that during the time prescribed by law for hearing exceptions to the valuation of property in Rutherford County, The Henrietta Mills did not ask a hearing.

Your affiant further states that he has had considerable experience in serving on the tax board for Rutherford County, and by twelve years experience as County Commissioners; that he is familiar with the mill buildings of The Henrietta Mills at Caroleen and Henrietta, with the store buildings at both places, and with the warehouses owned by said Company and that he has read the affidavit of G. W. Rollins placing a value thereon, and that he is of the opinion that the valuation placed by G. W. Rollins upon the mill buildings, the warehouses and the store buildings is in all respects a fair valuation of said property for taxation. Your affiant further states that he has had considerable experience during his service as a member of the Board of Commissioners and on the tax board for Rutherford County in arriving at the value of water powers; that there are three mills in Rutherford County on Second Broad River which are operated partially or wholly by water power; that the three mills operated in said County by water power are the two mills at Henrietta and Caroleen owned by The Henrietta Mills and the mill situated at Cliffside and owned by the Cliffside Mills; that he has conferred with the officials of these mills a number of times during his experience as a public official in order to ascertain and find out the true valuation of water power and that from the information which he has been able to obtain the fair valuation of water power is $150.00 per horsepower; that he knows the type of construction of the dams at Caroleen and Henrietta and knows the construction of the dam at Cliffside; that all of said dams are located on the same stream and not more than two or three miles apart, and that the flow of the stream at each of said places is practically the same and that the construction of said dams is similar; that he has been advised that the water power at Cliffside Mills at Cliffside, North Carolina, produces on an average of twelve to sixteen hundred horsepower per day and that the dams at Caroleen and Henrietta should, for all practical purposes, each produce practically the same horsepower.

[fol. 130] Your affiant attaches hereto a list of the taxable values on the physical properties of the Cliffside and Avondale Mills, The Alexander Mills, The Florence Mills, The Spencer Mills and The Henrietta Mills, all of Rutherford County, to the end that by comparison it may be readily ascertained that the physical property of The Henrietta Mills is not assessed for taxation for the year 1927 at a higher percentage of its actual value than that of other cotton mills in Rutherford County.

Your affiant further states that, in his opinion, to accept the valuation placed upon the physical property of The Henrietta Mills by its officers and agents would be inequitable, unjust and unfair to all the other taxpayers of Rutherford County.

Your affiant further states that as a member of the Board of County Commissioners of Rutherford County, that in equalizing the values in Rutherford County he used his own judgment in arriving at the actual true value in money of all the property assessed for taxation in Rutherford County, and that neither he nor the other members of the Board of County Commissioners, nor any member of the Board of Equalization in the joint meeting, discussed or attempted to levy taxes for Rutherford County upon 60% of the valuation thereon, but on the other hand used their very best efforts and judgments to assess said property at its actual true cash value in money.

That this affiant and the members of the Board of County Commissioners had no purpose to discriminate against The Henrietta Mills in the tax assessment which was made; that there was no desire or purpose on the part of this affiant or said Board of County Commissioners or Board of Equalization or any member thereof, as expressed at any time, to discriminate against the said The Henrietta Mills by making an estimate out of line or out of proportion to the estimates made against other property of similar character situated in Rutherford County, and the sole purpose of this affiant and the Board of County Commissioners and Board of Equalization was to make reasonable, fair and just estimates of the property of The Henrietta Mills and of the other cotton mills of Rutherford County, and all of the other real estate situated in said county, and this affiant's sole purpose was to arrive at the true, real cash

[fol. 131] value, in money of the property of the said The Henrietta Mills along with all the other property in said Rutherford County.

And further this deponent sayeth not.

W. S. Harris, Affiant.

Subscribed and sworn to before me this the 14 day of May, 1928. J. R. Chambers, Notary Public. My commission expires on the 8 day of Nov. 1928. (N. P. Seal.)

AFFIDAVIT OF Z. O. JENKINS—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

Z. O. Jenkins, a citizen of Rutherford County, of lawful age, first being duly sworn, deposes as follows:

I was one of the Board of Supervisors appointed by the Board of Commissioners for the County of Rutherford for the purpose of supervising the listing of taxes and the valuation of property in Rutherford County for the year 1927; and I, together with Mr. George Biggerstaff and Mr. C. F. Geer, the two other Supervisors of Rutherford County and the Tax Assessors for Rutherford County convened in a meeting at Rutherfordton on the 2nd day of July, 1927, and examined the tax return of The Henrietta Mills on which said corporation had listed its taxes for the year 1927, and which said tax return the Tax Assessors had revised so that the aggregate value of real estate, machinery, buildings and tenements shown on said abstract or return was increased to the sum of $2,124,235.00; said property having been entered on said return by The Henrietta Mills for an aggregate of only $1,373,768.00.

The difference between the value placed on said property [fol. 132] by The Henrietta Mills and the value placed on same by the Tax Assessors, and approved by the Supervisors of Rutherford County, was arrived at in the following manner: The Tax Assessors placed a value on the real estate, machinery, buildings and tenements of The Henrietta Mills of $2,124,235.00, which was $56,575.00 less than the amount at which said property had been assessed for taxes for the past four years; whereas, The Henrietta Mills,

in its tax return for 1927, endeavored to reduce this valuation by more than $750,000.00. In my opinion the valuation placed upon said property by the Tax Assessors of High Shoals Township and approved as hereinabove stated, is the just and fair valuation of said property and I also believe that said property was not assessed by the township list-takers of High Shoals Township at a higher valuation than that of similar property of other mills in Rutherford County. I further certify that I have read the affidavits of Mr. G. W. Rollins dated the — day of May, 1928, and the affidavit of Mr. W. G. Harris, Chairman of the Board of Commissioners for the County of Rutherford, dated May —, 1928, said affidavits referring to the valuation of the property of The Henrietta Mills for taxation for the year 1927, and the statements made in said affidavits are true to the best of my knowledge, information and belief.

Your affiant further states that as a member of the Board of Equalization for Rutherford County, in equalizing the values in Rutherford County he used his best judgment in arriving at the actual true value in money of all the property assessed for taxation in Rutherford County, and that neither he nor the other members of the Board of County Commissioners, nor any member of the Board of Equalization in the joint meeting, discussed or attempted to levy taxes for Rutherford County upon 60% of the valuation thereon, but on the other hand used their very best efforts and judgment to assess said property at its actual true cash value in money.

That this affiant and the members of the Board of Equalization of Rutherford County, had no purpose to discriminate against The Henrietta Mills in the tax assessment which was made; that there was no desire or purpose on the part of this affiant or said Board of Equalization or any [fol. 133] member thereof, as expressed at any time, to discriminate against the said The Henrietta Mills by making an estimate out of line or out of proportion to the estimates made against other property of similar character situated in Rutherford County, and the sole purpose on the part of this affiant or said Board of Rutherford County was to make reasonable, fair and just estimates of the property of The Henrietta Mills and of the other cotton mills of Rutherford County, and of all the other real estate situated

in said county, and this affiant's sole purpose was to arrive at the true, real cash value in money of the property of said The Henrietta Mills along with all the other property in said Rutherford County.

Z. O. Jenkins, Affiant.

Subscribed and sworn to before me this the 12 day of May, 1928. J. R. Chambers, Notary Public. My commission expires on the 8 day of October 1928. (N. P. Seal.)

AFFIDAVIT OF GEORGE BIGGERSTAFF—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

George Biggerstaff, a citizen and resident of Rutherford County, of lawful age, first being duly sworn deposes and says:

I have acted as Tax Assessor in Rutherford County for a great number of years and as Supervisor for Rutherford County in the years of 1911 and 1912 and also in the years 1923 and 1927 both inclusive, I have heretofore served as Treasurer of Rutherford County for an aggregate period of ten years. I feel that my long experience as tax assessor and County Supervisor has familiarized me with the value of real and personal property in Rutherford County. As a member of the Board of Super- [fol. 134] visors for Rutherford County for the year 1927 it became my duty, together with the other members of the Board of Supervisors and the Township Assessors of Rutherford County, to examine and revise the valuations placed by the tax assessors upon the property of Rutherford County. The Henrietta Mills filed with said tax assessors a return of its property for the year 1927, on which the said The Henrietta Mills had placed a value on the real property, machinery, buildings and tenements of $1,373,-768.00 and the Tax Assessors for High Shoals Township, considering this valuation too low revised the return of The Henrietta Mills to the amount of $2,124,235.00 on said real property, machinery and buildings and tenements, and on the 2nd day of July, 1927, said Tax As-

sessors for High Shoals Township brought up for the consideration of the Board of Supervisors and the Tax Assessors of Rutherford County so convened, said return of The Henrietta Mills which had been so revised by the Tax Assessors and after due consideration of said tax return it was the unanimous opinion of the meeting that the valuation placed on said property by the tax assessors, to-wit, the sum of $2,637,819., is the true and just value of said property for taxation.

I am familiar with the physical property of The Henrietta Mills and for the past fifteen years have been familiar with the *the* tax records of Rutherford County, and I know that for the past several years the valuation of the real estate, machinery, buildings and tenements of The Henrietta Mills has been as follows:

For the year 1920	$2,400,000.00
For the year 1921	2,160,000.00
For the year 1922	2,110,000.00
For the year 1923	2,160,000.00
For the year 1924	2,180,880.00
For the year 1925	2,180,800.00
For the year 1926	2,180,800.00

and that the valuation of the same property placed thereon by the Board of Assessors for High Shoals Township for the year 1927 was $2,124,235.00.

That about the year 1920 the cotton mill property in Rutherford County was valued by experts sent to Rutherford County by the State Tax Commission, which valua-
[fol. 135] tion was at that time accepted as the true value of the physical property of said mills; that later, in the year 1921, the Board of Commissioners for the County of Rutherford made a horizontal reduction of ten (10%) per cent in the value for taxation of all property in Rutherford County and that this reduced value has been accepted as the valuation by each of the mills in the County since that time with only such changes as might be brought about by new construction at such mills; that in the instance of The Henrietta Mills this new construction has amounted to approximately $20,000 within said period.

I am Chairman of the Board of Supervisors for Rutherford County and I further certify that on the 2nd day

of July 1927, the tax return submitted by The Henrietta Mills was passed upon by the Board of Supervisors and the Township Assessors for Rutherford County, and a copy of said tax return as amended and revised by the Tax Assessors for High Shoals Township and approved by the Board of Supervisors and Tax Assessors for Rutherford County, was immediately returned by special delivery mail to The Henrietta Mills at its postoffice address at Caroleen, N. C. I further certify that I sat with the Board of County Commissioners at their meeting on the 11th day of July, and that the order referred to in the affidavit of Mr. W. G. Harris, acting as Chairman of the equalization board adopting the findings of the County Board of Supervisors was made; and that at no time from the 2nd day of July until the hearings were completed by the equalization board on the 15th day of July were there any exceptions filed with either the Supervisors or the Equalization Board by The Henrietta Mills to the action of the Township Assessors in increasing the valuation of the property of The Henrietta Mills; nor did any agent or other person connected with The Henrietta Mills appear in person and ask for a reduction of said revised return.

Your affiant further states that as a member of the Equalization Board of Rutherford County, that in equalizing the values in Rutherford County he used his own judgment in arriving at the actual true value in money of all the property assessed for taxation in Rutherford County, and that neither he nor the other members of the Board of Equalization nor any member of the Board [fol. 136] of County Commissioners in the joint meeting discussed, or attempted to levy taxes for Rutherford County upon 60% of the valuation thereon, but on the other hand used their very best efforts and judgment to assess said property at its actual true cash value in money.

That this affiant and the members of the Board of Equalization of Rutherford County, had no purpose to discriminate against The Henrietta Mills in the tax assessment which was made; that there was no desire or purpose on the part of this affiant or said Board of Equalization or any member thereof, as expressed at any time, to discriminate against the said The Henrietta Mills by making an estimate out of line or out of proportion to the estimates

made against other property of similar character situated in Rutherford County, and the sole purpose of this affiant and the Board of Equalization of Rutherford County was to make reasonable, fair and just estimates of the property of The Henrietta Mills and of the other cotton mills of Rutherford County, and of all the other real estate situated in said county, and this affiant's sole purpose was to arrive at the true, real cash value in money of the property of said The Henrietta Mills along with all the other property in said Rutherford County.

George Biggerstaff, Affiant.

Subscribed and sworn to before me this the 14th day of May, 1928. Logna B. Logan, Notary Public, Rutherford Co., N. C. My commission expires on the 26 day of Jan'y, 1930. (Seal.)

[fol. 137] AFFIDAVIT OF W. O. GEER—Filed May 18, 1928

[Title omitted]

Affidavit

W. O. Geer, first being duly sworn, deposes and says:

That he is Register of Deeds for Rutherford County, North Carolina, and has been serving in that capacity for the past two years; that he has read the affidavit of J. F. Timmerman who is an officer of or connected with The Henrietta Mills, said affidavit dealing with the sale price and with the assessed valuation of certain property transferred during the year 1927 upjon the books on the office of the Register of Deeds for Rutherford County, North Carolina; that this affiant is familiar with the practice which obtains in Rutherford County as well as in other counties of the state, among those who trade in real estate to include in the consideration recited in the deed a larger sum than that which was actually paid for the property conveyed, the reason being that upon the resale of said property that it furnishes a better basis for trading, and that custom has been prevalent for sometime; that a further explanation of the difference in the recited consideration and the assessed value of said property described

in the conveyances reported, is that in a large number of instances the sale is on time and the payments are scattered [fol. 138] over a long period of years, and the same property sold for cash would not bring anything like the sum recited in said conveyances. That it frequently occurs that property sold in Rutherford County for cash does not bring as much as it is assessed on the books of Rutherford County for taxes, and this frequently occurs at public sales; that it is the opinion of your affiant that large amounts of land in Rutherford County can be bought today for cash at its assessed value and in some instances at less than its assessed value, and this especially applies to farm lands throughout the County. That the estimated value of all the property in Rutherford County—when it has been placed at $60,000,000.00, included not the present cash value, but the estimated real value, and likewise included all of the school property of the county which is extensive, and all of the County property, and all of the property of the churches, hospitals, fraternal and charitable institutions, none of which is included in the tax estimate, the same being by law free and exempt from taxation, and this fact accounts for the difference in the published estimated value of the property in Rutherford County and that as shown on the tax books. That there is also exempt from taxation in Rutherford County $300.00 worth of personal property for each household.

Your affidavit further states that he has not heard, and has not been advised and does not believe that the taxing authorities of Rutherford County have made any arrangements or have been moved by any purpose to assess the property of said County at only 60% of its value, but that in his judgment the said taxing officers have honestly and conscientiously endeavored to make their assessments at the true real cash value in accordance with Chapter 71 of the Public Laws of 1927.

Your affiant further states that he has carefully examined his records with reference to the number of real estate transfers in Rutherford County for the year 1927, and that his records show that there were 1914 transfers of real property in Rutherford County during said year.

W. O. Geer, Affiant.

[fol. 139] Sworn and subscribed to before me this the 14th day of May, 1928. Logna B. Logan, Notary Public. My commission expires on the 26 day of Jan'y, 1920. (Seal.)

AFFIDAVIT OF G. E. MORGAN—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

G. E. Morgan, a citizen and resident of Rutherford County, first being duly sworn, deposes and says:

That he is a member of the Board of Commissioners for the County of Rutherford; that he is also engaged in the contracting business and is familiar with the cost of construction of buildings such as the mill buildings, warehouses, storehouses and tenements of The Henrietta Mills; that he has read the affidavit of Mr. G. W. Rollins and is also acquainted with values in Rutherford County, and that the values placed upon the said physical property of The Henrietta Mills, including its water power, is a fair, just and equitable value of said property for the purposes of taxation. That your affiant has been a member of the Board of Commissioners for the County of Rutherford for the period of about six years and during said time has become acquainted with the tax values in Rutherford County, and, in his opinion, to accept the value placed upon the physical property of The Henrietta Mills by its officers and agents would be inequitable, unjust and unfair to all the other tax payers of Rutherford County.

That The Henrietta Mills, prior to the latter part of the year 1926 or the early part of 1927 was controlled and managed by Rutherford County citizens and at no time during the management of these citizens was there any objection to the valuation placed upon said property and it was only after the control and management of these mills had passed into hands outside of the State of North Carolina that an effort was made to secure a reduction in the valua-
[fol. 140] tion of the physical property thereof.

Your affiant further states that as a member of the Board of County Commissioners of Rutherford County, that in equalizing the values in Rutherford County he used his own judgment in arriving at the actual true value in money

of all the property assessed for taxation in Rutherford County, and that neither he nor the other members of the Board of County Commissioners, nor any member of the Board of Equalization in the joint meeting, discussed or attempted to levy taxes for Rutherford County upon 60% of the valuation thereof, but on the other hand, used their best efforts and judgment to assess said property at its actual true cash value in money.

That this affiant and the members of the Board of Commissioners of Rutherford County, had no purpose to discriminate against The Henrietta Mills in the tax assessment which was made; that there was no desire or purpose on the part of this affiant or said Board of County Commissioners or any member thereof, as expressed at any time, to discriminate against the said The Henrietta Mills by making an estimate out of line or out of proportion to the estimates made against other property of similar character situated in Rutherford County, and the sole purpose of this affiant and the Board of Commissioners for Rutherford County was to make reasonable, fair and just estimates of the property of The Henrietta Mills and of the other cotton mills of Rutherford County, and of all the other real estate situated in said county, and this affiant's sole purpose was to arrive at the true real cash value in money of the property of said The Henrietta Mills along with the other property in said Rutherford County.

G. E. Morgan, Affiant.

Subscribed and sworn to before me this the 14th day of May, 1928. Logna B. Logan, Notary Public. My commission expires on the 26 day of Jan'y, 1930. (Seal.)

[fol. 141] AFFIDAVIT OF G. W. ROLLINS—Filed May 18, 1928

[Title omitted]

Affidavit

G. W. Rollins, first being duly sworn, says:

That he has read the affidavit of W. S. Forbes with reference to the value of the property of The Henrietta Mills

on or about October 1, 1926, and the price which he alleges that he received for the sale of his stock in said corporation at that time, his statement being that he received a little less than $100.00 per share for said common stock. That this affiant lives in the same township in Rutherford County in which The Henrietta Mills is located, and that he is somewhat familiar with the transactions which occurred at the time of the sale of said stock by the said Forbes, and he knows that there is a reason for the sale of the said stock by Forbes at less than its real value. That as further evidence that the said Forbes sold said stock below its real market value, this affiant is informed and believes and herein states upon reliable information, that various parties sold stock in said Henrietta Mills on or about October 1st, 1926 and received $150.00 per share for said common stock, among said parties so selling and receiving was the Tanner Estate as represented by K. S. Tanner, where approximately 200 shares of said stock was sold for the sum of $30,000.00; that J. H. Thomas of Forest City, sold approxi-
[fol. 142] mately 200 shares for the sum of $30,000.00; that C. M. Woodfin of Nutley, N. J., sold a large block of said stock for the sum of $150.00 per share; that J. P. Pitkin of Reidsville N. C., also sold considerable number of shares of said stock at $150.00 per share. That these purchases, as affiant is informed and believes, were made by the parties who now own The Henrietta Mills, and who are seeking the reduction in said tax valuation.

G. W. Rollins, Affiant.

Subscribed and sworn to before me this the 14 day of May, 1928. Logna B. Logan, Notary Public. My commission expires on the 26 day of Jan'y, 1930. (N. P. Seal.)

AFFIDAVIT OF G. W. ROLLINS—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

G. W. Rollins, first being duly sworn, deposes and says: That he is a member of the Board of Commissioners for the County of Rutherford and has been for the past six

years; that prior to his election to the Board of Commissioners and during the years of 1913, 1914, 1915 and 1916 he was Assistant Superintendent of The Henrietta Mills and is thoroughly familiar with the physical property and equipment of said mills; that he has examined the tax return of The Henrietta Mills and has examined the corrected tax return made by the Tax Assessors, and Board of Supervisors; that the difference between the value placed on said property by The Henrietta Mills and the value on same by the Tax Assessors and Supervisors of Rutherford County was arrived at in the following manner: The Tax [fol.143] Assessors and Supervisors placed a valuation on the real estate, machinery, buildings and tenements of The Henrietta Mills of $2,124,235.00 which was $56,575.00 less than the amount at which said property had been assessed for taxes for the past four years; whereas The Henrietta Mills, in its tax return for 1927 endeavored to reduce this valuation by more than $750,000.00. I am familiar with the real estate, buildings, tenements and machinery of The Henrietta Mills, and in my opinion the valuation placed upon said property by the Tax Assessors of High Shoals Township and approved by the Supervisors is a just and fair valuation of said property and that said property is not assessed at a higher valuation than similar property of other mills in Rutherford County. In arriving at the valuation on the mill buildings and machinery there should be taken into consideration the fact that this machinery was run by water power developed by two dams across Second Broad River at the mills of this corporation and that the two dams develop an aggregate of approximately 2,000 horsepower; and that the fair valuation of said horsepower for replacement is $150.00 per horsepower, making a total valuation of $300,000.00, all of which is omitted in the tax return of The Henrietta Mills. This corporation has 75,116 spindles and 1,769 looms. The mill buildings on this property are substantial; most of the construction of the same being of brick; they are adequate for the needs of the company and are in good repair and that a considerable portion of the machinery in those mills has been bought within the past few years.

There are so many different items of personal property listed by The Henrietta Mills in its schedule that it is somewhat impractical in an affidavit to state in each instance

where The Henrietta Mills has under-valued the same, but for the purpose of illustration I will refer to some valuations shown on the first page of the schedule attached to the return of The Henrietta Mills; The mill buildings at Henrietta are listed at $87,463.00 and the mill buildings at Caroleen are listed at $130,544.00. These buildings are in good repair and adequate for the business for which they are being used, and, in my estimation, these two mill buildings could not be replaced for less than $500,000.00. The warehouses listed on said schedule at an aggregate valuation [fol. 144] of $71,667.00 could not, in my estimation, be replaced for less than $140,000.00; and the store buildings listed on said schedule at $30,000.00 could not, in my estimation be replaced for less than $80,000.00.

Your affiant further states while he was Assistant Superintendent of The Henrietta Mills he learned and ascertained the approximate amount of power derived from these two water power plants and, in his opinion, two thousand horsepower for both of these water power plants is a conservative estimate of the amount of power developed by said two dams across Second Broad River and that in all probability the correct amount of horse-power would considerably exceed this amount, perhaps to the extent of two to three hundred horsepower.

Your affiant further states that he went to the Post Office at Caroleen, North Carolina; had a conversation with the Postmaster and examined the Postmaster's records, which showed that on July 3rd, 1927, a special delivery letter from the County Board of Supervisors and The Township Board of Assessors was delivered to The Henrietta Mills, advising The Henrietta Mills of the revisal of the original tax return submitted by them.

Your affiant further states that, in his opinion, it would be inequitable, and unjust and unfair to the other taxpayers of Rutherford County to accept the valuation placed upon the physical property of The Henrietta Mills by its officers and agents. Your affiant further states that as a member of the Board of County Commissioners of Rutherford County, that in equalizing the values in Rutherford County he used his own judgment in arriving at the actual true value in money of all the property assessed for taxation in Rutherford County, and that neither he nor the other members of the Board of County Commissions, nor any

member of the Equalization in the joint meeting, discussed or attempted to levy taxes for Rutherford County upon 60% of the valuation thereon, but on the other hand used their very best efforts and judgments to assess said property at its actual true cash value in money.

That this affiant and the members of the Board of County Commissioners had no purpose to discriminate against The Henrietta Mills in the tax assessment which was made; that there was no desire or purpose on the part of this affiant [fol. 145] or said Board of County Commissioners or Board of Equalization or any member thereof, as expressed at any time, to discriminate against the said The Henrietta Mills by making an estimate out of line or out of proportion to the estimates made against other property of similar character situated in Rutherford County, and the sole purpose of this affiant and the Board of County Commissioners and Board of Equalization was to make reasonable, fair and just estimates of the property of The Henrietta Mills and of the other cotton mills of Rutherford County, and of all the other real estate situated in said county, and this affiant's sole purpose was to arrive at the true, real cash value in money of the property of the said The Henrietta Mills along with the other property in said Rutherford County.

G. W. Rollins, Affiant.

Subscribed and sworn to before me this the 15 day of May, 1928. J. R. Chambers, Notary Public. My commission expires on the 8 day of Nov., 1928. (N. P. Seal.)

AFFIDAVIT OF FRANK P. STRATFORD—Filed May 18, 1928

[Title omitted]

[fol. 146] Affidavit

Frank P. Stratford, first being duly sworn, says:

That he is County Accountant for Rutherford County, and that he made an affidavit as appears in this proceedings setting forth certain records which appear in his office, and certain correspondence relating to the bond

sale for Rutherford County. That in the advertisement giving the resources of Rutherford County that the property of the County was estimated to be worth $60,000,000.00, and that in arriving at that estimate the real value of all the property in Rutherford County was taken into consideration, as distinguished from what this property would really bring at a cash sale.

Your affiant further states that in arriving at all the value of the property in Rutherford County, there should be included all the property whether on the tax books or not, and this would include the $300.00 personal property exemption allowed to each house-holder in Rutherford County; and should include all of the school buildings of Rutherford County, which amounts to a considerable sum, as well as all of the church property in said County and all of the property owned by beneficent, charitable and fraternal institutions, such as the various lodges, church organizations, hospitals and other institutions of similar character, none of which under the law is required to be assessed for taxes. The estimate should also include all of the municipal property of the various towns and municipalities situated in Rutherford County, some of the various towns and municipalities of Rutherford County not only owning extensive buildings, but in addition thereto water works systems, electric light plants, and other municipal improvements which would run into extensive sums. There should also be included in said estimate a magnificent court house erected in Rutherfordton at considerable expense, together with a new jail and modern County Home.

Your affiant further states he is not a tax assessor or taxing officer of Rutherford County, and that the estimate which he placed upon said property was his personal opinion and was not authorized by the County Commissioners, the Board of Equalizatiou or other taxing authorities for said county.

[fol. 147] Affiant further states that he has not heard and has not been advised and does not believe that the Taxing authorities of Rutherford County have made any arrangements or have been moved by any purpose to assess the property of said County at only 60% of its value, but that in his judgment said taxing officers have honestly and con-

scientiously endeavored to make their assessments at the true, real cash value and in accordance with Chapter #71 of the Public Laws for 1927.

Frank P. Stratford, Affiant.

Subscribed and sworn to before me this the 12th day of May, 1928. Logna B. Logan, Notary Public. My commission expires on the 26 day of Jan'y 1930. (Seal.)

AFFIDAVIT OF C. F. GEER—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford, ss:

C. F. Geer, a citizen of Rutherford County, of lawful age, being first duly sworn, deposes as follows:

I have been engaged in the real estate business, the erection of buildings and as a merchant in Rutherford County for the past 25 years and am familiar with the value of property in Rutherford County. I was a member of the County Board of Supervisors for Rutherford County for the year 1927 and in connection with my duties as Supervisor I reviewed and approved the valuation placed on the property of the Henrietta Mills by list takers of High Shoals Township.

In connection with my duties as Supervisor I had occasion to examine the tax returns of all of the cotton mills [fol. 148] in Rutherford County and to ascertain the valuation of their properties as placed thereon by the list takers for the year 1927 and in my opinion the valuation which the list takers have placed on the property of The Henrietta Mills and which was approved by the Board of Supervisors for Rutherford County is no higher than the same class of property of other mills of Rutherford County of a similar character is valued.

I have read the affidavit of G. W. Rollins, a former assistant superintendent of The Henrietta Mills and a member of the present Board of Commissioners for Rutherford County, which is filed in this cause and the statements therein made are true to the best of my judgment,

information and belief. On July 2, 1927, the Board of Supervisors of Rutherford County and the Tax Listers and Assessors of Rutherford County convened in meeting for the purpose of reviewing jointly the valuation and assessment theretofore made by the Tax Listers of Rutherford County to the end that it might be ascertained whether the various assessors had adopted the same means and methods of valuing land in the various townships, correcting any errors which may have been committed and equalizing the valuation in the different townships; at said meeting there was brought up for consideration the tax return made by the Henrietta Mills, which had been forwarded to the local tax assessors and which they had amended in that the total valuation shown thereon of land, machinery, buildings and tenements had been changed from a valuation of $1,373,768.00, placed thereon by The Henrietta Mills, to a valuation of $2,124,-235.00. And at said meeting the action of said list-takers for High Shoals Township in increasing said valuation to said sum of $2,124,235.00 was considered and approved as the proper valuation of said property for the purposes of taxation and a notice of the action of the said taxing authorities of Rutherford County in so fixing the valuation on the property of The Henrietta Mills was mailed to The Henrietta Mills on said 2nd day of July, 1927, by special delivery letter, and affiant is informed and believes that the said letter was received by The Henrietta Mills on July 3rd, 1927. After reviewing the assessment no demand was ever made upon the Board of Supervisors for a re-assess-
[fol. 149] ment of said taxes and at no time did The Henrietta Mills file with us written exceptions or through their officers, agents or employees ask or request that said assessment be reduced. Your affiant further states that he has been in the Company stores of The Henrietta Mills at Henrietta and Caroleen a number of times. That he knows approximately the size and the character of the buildings and that in his opinion the replacement value of the stores of Henrietta and Caroleen would amount to at least $80,000.00. Your affiant further states that he is acquaintaed with all of the physical property of The Henrietta Mills and that in his opinion the assessment of said property for taxation by the local

Board of County Assessors and by the Board of Supervisors is a conservative and extremely fair cash value of the physical property and that in his opinion the same could not be replaced for less than 40% more than the same is valued at for taxation in 1927. Your affiant further states that before affirming the assessment of the local Township Supervisors he with the other County Supervisors made a trip to The Henrietta Mills at Henrietta and Caroleen, North Carolina, and was shown over said mills by the superintendents and that the said superintendents stated to your affiant that they were operating approximately one-half of the machinery operated at Caroleen and Henrietta by the water power developed from their power plants. Your affiant is of the opinion that any reduction from the assessed valuation of The Henrietta Mills as fixed by the State Board of Assessment would be a gross and serious injustice not only to the other mills of the County but to all the taxpayers of Rutherford County.

Your affiant further states that as a member of the Board of Equalization of Rutherford County, that in equalizing the values in Rutherford County he used his own judgment in arriving at the actual true value in money of all the property assessed for taxation in Rutherford County, and that neither he nor the other members of the Board of Equalization, nor any member of the Board of County Commissioners in the joint meeting, discussed or attempted to levy taxes for Rutherford County upon 60% of the valuation thereon, but on the other hand, used their very best [fol. 150] efforts and judgment to assess said property at its actual true cash lue in money.

That this affiant and the members of the Board of Equalization of Rutherford County, had no purpose to discriminate against The Henrietta Mills in the tax assessment which was made; that there was no desire or purpose on the part of this affiant or said Board of Equalization or any member thereof, as expressed at any time, to discriminate against the said The Henrietta Mills by making an estimate out of line or out of proportion to the estimates made against other property of similar character situated in Rutherford County, and the sole purpose of this affiant and the Board of Equalization of Rutherford County was to make reasonable, fair and just estimates of the property of The Henrietta Mills and of the other cotton mills of

Rutherford County, and of all the other real estate situated in said county, and this affiant's sole purpose was to arrive at the true, real cash value in money of the property of said The Henrietta Mills along with all the other property in said Rutherford County.

C. F. Geer, Affiant.

Subscribed and sworn to before me this the 14 day of May, 1928. J. R. Chambers, Notary Public. My commission expires on the 8 day of Nov., 1928. (N. P. Seal.)

AFFIDAVIT OF J. W. BEESON, J. D. MORRIS AND H. M. RUCKER—Filed May 18, 1928.

STATE OF NORTH CAROLINA,
County of Rutherford:

We, J. W. Beason, J. D. Morris, and H. M. Rucker, constituting the board of list-takers and assessors for Ruther- [fol. 151] fordton Township, Rutherford County, North Carolina, for the year 1927; R. Ledbetter, G. M. Flack and W. A. Rucker, constituting the board of list-takers and assessors for Green Hill Township, Rutherford County, North Carolina, for the year 1927; D. A. Lollar, one of the list-takers and assessors for Union Township, Rutherford County, North Carolina, for the year 1927; R. A. Harris and H. S. Jenkins, constituting the board of list-takers and assessors for Sulphur Springs Township, Rutherford County, North Carolina, for the year 1927; G. O. Holland, R. E. Wall and Wister Bridges, constituting the board of list-takers and assessors for High Shoals Township, Rutherford County, North Carolina, for the year 1927; N. A. Green, John E. Glover and C. B. Harrill, constituting the board of list-takers and assessors for Colfax Township, Rutherford County, North Carolina, for the year 1927; Plato Gettys, one of the list-takers and assessors for Duncan's Creek Township, Rutherford County, North Carolina, for the year 1927; J. A. Long, H. K. Logan and J. A. Hampton, constituting the board of list-takers and assessors for Logan's Store Township, Rutherford County, North Carolina, for the year 1927; M. G. Crow, one of the list-takers

and assessors for Golden Valley Township, Rutherford County, North Carolina, for the year 1927; C. C. Goforth and O. J. Holler, constituting the board of list-takers and assessors for Camp Creek Township, Rutherford County, North Carolina, for the year 1927; L. D. Hemphill, one of the list-takers and assessors for Morgan Township, Rutherford County, North Carolina, for the year 1927; Z. V. Taylor, Joe D. Flack and J. A. Dalton, constituting the board of list-takers and assessors for Chimney Rock Township, Rutherford County, North Carolina, for the year 1927; H. P. Rucker, one of the list-takers and assessors for Gilkey Township, Rutherford County, North Carolina, for the year 1927; G. M. Huntley, H. B. Doggett, and J. C. Scruggs, constituting the board of list-takers and assessors for Cool Springs Township, Rutherford County, North Carolina, being severally sworn each for himself deposes and says:

I have read the affidavits of Mr. W. G. Harris, Chairman of the Board of Commissioners for the County of Rutherford, and Mr. G. W. Rollins, member of the Board of Com- [fol. 152] missioners for Rutherford County, concerning the valuation and assessment for taxation of the property of The Henrietta Mills in Rutherford County for the year 1927, and to the best of my knowledge and belief, the matters and things stated in said affidavits are true.

Your affiants further swear that at the time of their appointment they had a meeting with the Board of Supervisors for Rutherford County and also with the Board of Commissioners for Rutherford County and that at that time, and before entering upon the duties of their offices as said list-takers and assessors, the said Board of Supervisors and the said Board of Commissioners for Rutherford County instructed said list-takers and assessors to value the property, real and personal in their respective townships at its true and actual value in money and that the said value of said property for the year 1927 as taken by your affiants was, to the best of their judgment, valued at its true and actual value in money in accordance with the statutes of North Carolina and especially Chapter 71 of the Public Laws of 1927; that in fixing said values of said property your affiants valued the same according to their best judgment and without any intent to discriminate against any person or piece of property in the said County;

that at no time did your affiants, or either of them, intentionally, systematically or arbitrarily discriminate against any person or property but, on the other hand, honestly, conscientiously and in their best judgment valued said property at its true and actual value in money; and that all of the real estate and personal property of the county of Rutherford was valued by the assessors for the year 1927 under the supervision of the Board of Supervisors for Rutherford County, composed of Messrs. Z. O. Jenkins, George Biggerstaff and C. F. Geer.

I further state that I have been informed that in a certain proceedings now depending in the District Court of the United States for the Western District of North Carolina between The Henrietta Mills, as complainant, and the County of Rutherford and W. C. Hardin, Sheriff of Rutherford County, as defendants, that it is alleged in said complaint that the property in Rutherford County was Assessed for taxation for the year 1927 by the list-takers and assessors of Rutherford County at only sixty (60%) per cent. [fol. 153] of its true value in money. In reply to this statement I desire to say that the same is wholly untrue and that it was the conscientious aim of myself as a list-taker and assessor to assess each and every piece of property for taxation for the year 1927 at its true and actual value in money.

John E. Glover, N. A. Green, M. G. Crow, D. A. Lollar, O. J. Holler, G. M. Flack, W. A. Rucker, Joe D. Flack, J. A. Dalton, L. D. Hemphill, C. C. Goforth, J. A. Long, Plato Gettys, J. C. Scruggs, Z. V. Taylor, Wister Bridges, G. O. Holland, R. A. Harris, H. S. Jenkins, H. K. Logan, R. Ledbetter, J. A. Hampton, J. D. Morris, H. B. Doggett, H. P. Rucker, J. W. Beason, R. E. Wall.

Sworn to and subscribed before me this 15th day of May, 1928. J. R. Chambers, Notary Public, Rutherford County, N. C. My commission expires Nov. 8, 1928. (N. P. Seal.)

[fol. 154] AFFIDAVIT OF G. O. HOLLAND AND OTHERS—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

G. O. Holland, R. E. Wall and Wister Bridges, citizens and residents of Rutherford County, North Carolina, of lawful age, first being duly sworn, deposes as follows:

We were appointed Tax Assessors for High Shoals Township of Rutherford County, North Carolina, for the year 1927 by the Board of Supervisors for the County of Rutherford and it became our duty to list the taxes of The Henrietta Mills in Rutherford County for the year 1927. To that end we investigated the records of Rutherford County and ascertained that for the past four years the real estate, machinery, buildings and tenements of The Henrietta Mills had been listed at the following valuations:

For the year 1923	$2,160,000.00
For the year 1924	2,180,880.00
For the year 1925	2,180,800.00
For the year 1926	2,180,800.00

We examined the physical property of The Henrietta Mills; inspected its buildings and machinery, water power and real estate, and came to the conclusion that a valuation of $2,124,235 was the reasonable value of said property for taxation, and that said value was not placed at a higher figure than the valuations of similar property of other cotton mills in Rutherford County; and for that reason we considered it equitable and just that said property should be returned for taxation for the year 1927 at said valuation; that upon receipt of tax return from The Henrietta Mills for the year 1927, on which said return said corporation had attempted to reduce the valuation of its property to the extent of several hundred thousand dollars, that we considered this matter in a joint meeting of the Tax Lister [fol. 155] and Assessor for Rutherford County, and the County Supervisors for Rutherford County held on the 2nd day of July, 1927, and it was the unanimous opinion of said meeting that the said valuation placed on the real estate, machinery, buildings and tenements of The Henrietta Mills by the tax assessors of High Shoals Township was the rea-

sonable value of said property for taxation, and we accordingly amended the return of The Henrietta Mills to coincide with the judgment of said Tax Assessors and Supervisors and caused notice of the revision of the return of The Henrietta Mills to be mailed to The Henrietta Mills on July 2nd, 1927, by special delivery.

We further state that we have been informed that in a certain proceedings now depending in the District Court of the United States for the Western District of North Carolina between The Henrietta Mills, as complainant, and the County of Rutherford and W. C. Hardin, Sheriff of Rutherford County, as defendants, that it is alleged in said complaint that the property in Rutherford County was assessed for taxation for the year 1927 by the list-takers and assessors of Rutherford County at only sixty (60%) per cent of its true value in money. In reply to this statement we desire to say that the same is wholly untrue and that it was the conscientious aim of each of us as a list-taker and assessor to assess each and every piece of property for taxation for the year 1927 at its true and actual value in money.

G. O. Holland, R. E. Wall, Wister Bridges.

Subscribed and sworn to before me this the 14 day of May, 1928. J. R. Chambers, Notary Public. My commission expires on the 8 day of Nov., 1928. (N. P. Seal.)

[fol. 156] AFFIDAVIT OF J. F. FLACK AND OTHERS—Filed May 18, 1928

STATE OF NORTH CAROLINA,
County of Rutherford:

J. F. Flack, C. F. Gold, M. D., G. F. Phillips, J. M. Abrams, J. L. Wright, G. D. Koone, B. B. Woldrop, H. G. Freeman, John M. Flack, J. L. McMahon & J. O. Griswold, Citizens of Rutherford County, North Carolina, of lawful age, first being duly sworn, each for himself deposes as follows:

I have resided in Rutherford County for a number of years past and I am familiar with the valuation of lands

and property in Rutherford County for taxation, although I have no official connection with the tax assessing authorities of the County; and in my opinion a large portion of the farm lands of Rutherford County is now assessed on the tax books for as much or more than it would bring at a cash sale and some of said property has been sold for less than it is assessed for taxing purposes. I further certify that in my opinion the value for taxation placed on all the property in Rutherford County is uniform; that is to say, in my opinion the tax assessing authorities have endeavored to value all property justly and without discrimination of one piece or class of property over that of another piece or class of property.

And further this deponent saith not.

J. F. Flack, C. F. Gold, M. D., G. F. Phillips, J. M. Abrahams, J. L. Wright, G. D. Koone, B. B. Woldrop, H. G. Freeman, J. M. Flack & Son, by John M. Flack, J. L. McMahon, J. O. Griswold.

[fol. 157] Subscribed and sworn to before me this 15th day of May, 1928. J. R. Chambers, Notary Public, Rutherford County, N. C. My commission expires on the 8 day of Nov., 1928. (N. P. Seal.)

HEARING BEFORE STATE BOARD OF ASSESSMENT—Filed May 18, 1928

Copies: Chairman, Board of Commissioners, Rutherford County, Rutherfordton, N. C.; Mr. Willis Smith, Attorney for the Mills, Raleigh, N. C.; Mr. Fred D. Hamrick, Attorney for the County, Rutherfordton, N. C.; Henrietta Mills, Caroleen, N. C.; Register of Deeds, Rutherford County, Rutherfordton, N. C.

Office of State Board of Assessment, Raleigh, N. C.

October 19, 1927.

In re Valuation of HENRIETTA MILLS, Caroleen, N. C.

This proceeding coming on to be heard before the State Board of Assessment, with the following members present,

to-wit: R. A. Doughton, Chairman, and D. G. Brummitt, Attorney General, and being heard upon appeal by the Henrietta Mills from the valuation placed upon its property by the taxing authorities of Rutherford County. And at the hearing the County of Rutherford was presented by the Chairman of the Board of Commissioners and by the firm of Hamrick and Harris, Attorneys for said Board, and the petitioner or appellant being represented by cer-
[fol. 158] tain of its officers and by Mr. Willis Smith, their Attorney, and the matter being duly and fully heard upon affidavits and oral testimony;

Whereupon it is adjudged that the property of the Henrietta Mills described in said appeal be placed upon the tax books, for taxing purposes in said County of Rutherford, at a valuation of $1,849,235, being a reduction of the valuation placed upon said property from which appeal was taken of $275,000.

State Board of Assessment.

Detroit. Chicago. Boston. San Francisco

Filed May 18, 1928

The Detroit Company, Incorporated

Affiliated with Detroit Trust Co.

Investment Securities

14 Wall Street, New York

Telephone: Rector 2387-2388

Exempt from All Federal Income Taxes

$561,000

Rutherford County, North Carolina

4½% Bonds

Dated January 1, 1928. Due January 1, 1930-1943

Principal and semi-annual (January 1st and July 1st) payable in gold at the United States Mortgage and Trust

Company, New York City. Coupon bonds in denomination of $1,000.

Financial Statement

Actual Valuation (estimated)	$60,000,000
Assessed Valuation (1927)	36,302,627
Total Debt, including Notes	2,920,912
[fol. 159] Less Sinking Fund and amount*ed* owed County by School Districts	456,737
Net debt	2,464,175
Population (1920)	31,426
Present Estimate	38,000

Rutherford County, located in the southwestern part of North Carolina, contains an area of 348,160 acres. According to the latest Government reports 73.8% of its area was in farms, crops were valued at $3,919,326 and farm property at $12,557,792. Leading agricultural products are cotton, corn and various forage crops. The growing of fruits and the raising of live stock is carried on profitably. The County contains sixteen textile plants some of the largest in the South, manufacturing a wide variety of products. Transportation facilities are provided by three railroads

Rutherfordton, the County Seat of Rutherford County, has all modern improvements including electric lights, waterworks and paved streets Two cotton mills, a wood products factory, and a flour mill are its principal industrial plants. With two banks, a number of progressive mercantile establishments and excellent transportation facilities, Rutherfordton is the financial and commercial center of a large agricultural territory. Forest City, located within the County, also has several cotton mills.

These bonds were issued for road, bridge and school purposes and are a general obligation of the entire County, payable from unlimited ad valorem taxes levied against all taxable property therein.

Legal Opinion of Chester B. Masslich, Esq., New York City.

[fol. 160] Amounts and Maturities

Amount	Due	Yield
$24,000	Jan. 1, 1930	4.20%
24,000	" 1931	4.20
30,000	" 1932	4.20
27,000	" 1933	4.20
32,000	" 1934	4.20
35,000	" 1935	4.20
40,000	" 1936	4.20
40,000	" 1937	4.25%
50,000	" 1938	4.25%
43,000	" 1939	4.25
53,000	" 1940	4.25
57,000	" 1941	4.25
50,000	" 1942	4.25
56,000	" 1943	4.25

The statements contained herein, while not guaranteed, are based upon information which we believe to be accurate and reliable.

Service of copy of the foregoing statement of the evidence in the case of The Henrietta Mills vs. Rutherford County and W. C. Hardin Sheriff as prepared by the complainant appellant for transcript of record to the Court of Appeals is hereby acknowledged, service accepted and service thereof by an officer is waived. This July 23rd, 1928.

Quinn, Hamrick & Harris, Attys. for Dfts.

In United States District Court, Western District of North Carolina, Charlotte Division

The Henrietta Mills, Complainant,

vs.

Rutherford County in the State of North Carolina, and W. C. Hardin, Sheriff of Rutherford County, Defendants

Judgment—Filed June 28, 1928

At the request of the complainant in this suit, three [fol. 161] judges—Circuit Judge Parker and District

Judge Hayes and myself—were called to sit under section 266 of the Judicial Code. The three judges heard the argument in this case and came to a unanimous conclusion that it was not a proper case for three judges to pass upon. We so decided and filed a brief opinion to this effect. This leaves the settlement of the questions involved to me alone.

The complainant alleges that the appraisal by the county tax assessors of its real estate in Rutherford County is too high and out of proportion to the assessment of the other real property in Rutherford County, and claims that such assessment and such attempt to collect the amount based upon that assessment is unlawful and contrary to the constitution of the United States, and that to enforce the tax or assessment as made and claimed by Rutherford County would be a taking of the complainant's property without due process of law, and a denial to the complainant of the equal protection of the law, and that such threatened action on the part of the Sheriff and Rutherford County is in violation of the Fifth amendment and the Fourteenth amendment to the Constitution of the United States. The complainant further alleges that it has not an adequate remedy at law in the State of North Carolina to litigate the controverted question.

It will be noted in the complainant's bill that there is no allegation that the assessed value of its real estate is too high or in excess of its value, but that it is higher in proportion than other real estate is valued in the county. In this connection it might be noted that the assessed value of the complainant's real estate, upon which it is now sought to require it to pay taxes, is $1,849,235. It is alleged and not denied that the complainant itself, in the year 1923, listed its real estate and appraised it at the sum of $2,160,000, and these figures held generally throughout 1924, 1925 and 1926. The complainant alleges discrimination in the assessment of its property, while it is shown by the sworn answer of the respondents that the real estate of the Cliffside Mills in the same county is assessed at $2,051,500, with 61,000 spindles, and the assessed value per spindle of this mill [fol. 162] is $33.48; that the Alexander mill in the same county is taxed upon a value of $792,899 and has 15,841 spindles, and its assessed value for taxation per spindle is $50.06; while the complainant in this case, the Henrietta

Mills, has its real estate assessed at $1,849,235, with 75,000 spindles, and its assessed value for taxation per spindle is only $24.62. I have examined the affidavits and have treated the bill and the answer as affidavits, and I am unable to find any unlawful or unjust discrimination against the complainant in the assessment of its real property in Rutherford County.

But in my view of this case it is not necessary to go into the merits of the matter, because I am compelled to hold that the complainant has no standing in this Court. I can find nowhere in my careful perusal of the pleadings and the affidavits anything that shows that the action of the taxing authorities of Rutherford County, North Carolina, has violated either the Fifth or the Fourteenth amendment. But, in addition to this and stronger, I do find that the complainant in this matter had in the state of North Carolina an adequate remedy at law for the redress of its alleged wrongs. The laws of North Carolina give ample machinery procedure in the state courts for just such discriminations as is alleged by the complainant. The complainant pursued the methods marked out by the state laws partially in this case, but rather than to go further and test its rights in the state court, it has come to this federal tribunal. In North Carolina the courts were open to the complainant to either pay the tax to the sheriff and sue for the return of that portion of it alleged to be unlawfully collected, or, in my opinion, the complainant could have gone into the courts and asked for a restraining order to stop the collection by the sheriff of the tax alleged to be unlawfully levied. These remedies are plainly set forth in the North Carolina statutes, and in the opinion of this Court the complainant should have taken advantage of the remedies allowed by such statutes. The complainant, if dissatisfied with the assessed value of its real estate, should have appeared before the county commissioners sitting as a board of supervisors and there entered its protest and had a hearing, as provided by law. The complainant did not do this, however, [fol. 163] but paid no attention to the meeting of this board, whose duty it was to hear complaints about over-assessments; and the complainant waited until after the board had had a three or four days sitting, hearing complaints in 72 cases, and then the complainant demanded that its com-

plaint should be heard. But the local board had adjourned and there was no way to give the complainant a hearing under the law except by the state board of assessments. This board, composed of distinguished and high-minded men, well versed and learned in the proper assessment of property in North Carolina, gave to the complainant a full, fair and open hearing, at which hearing both sides were represented by able counsel, and after carefully going into the matter the state board reduced the assessed value of the complainant's property from $2,124,235 to that of $1,849,-235. It appears that this amount is the smallest upon which the complainant has been called upon to pay taxes for the past six or seven years.

The complainant certainly had its day in court, and, if dissatisfied with the action of the state board, then the state laws plainly mark out the remedy which it had for the redress of its grievances.

I therefore am compelled to find and hold that the complainant has not shown any violation of the Fourteenth amendment and has not been denied the equal protection of the law and that its property has not been taken or threatened to be taken without due process of law. I further find that the complainant had an adequate remedy at law.

For the foregoing reasons the complainant's suit must be dismissed, and it is so ordered. The complainant will pay the costs of the suit.

This June 26, 1928.

The Clerk will enter.

(S.) E. Y. Webb, U. S. District Judge.

[fol. 164] In United States District Court

Assignment of Errors—Filed July 23, 1928

Now comes the complainant, The Henrietta Mills, and having appealed to the United States Circuit Court of Appeals for the Fourth Circuit from the order and decree of said District Court entered on the 26th day of June, 1928, refusing to grant the complainant an Interlocutory Injunction as prayed for in the bill of complaint, enjoining

and restraining the defendants from collecting or attempting to collect from the complainant taxes on an alleged invalid and unlawful assessment, and from selling, or attempting to sell the property of the complainant to satisfy said taxes on such alleged illegal and unlawful assessment; and dismissing the suit of the complainant; and respectfully represents, as grounds of appeal and as assignments of error herein, that said order and decree in said cause is erroneous and against the rights of said complainant for the following reasons:

1. Because the Court erred in holding that "in the complainant's bill there is no allegation that the assessed value of its real estate is too high or in excess of its value, but that it is higher in proportion than other real estate is valued in the County", when paragraph No. 14 of the bill of complaint specifically alleges that the property of complainant is assessed at more than its true value, in addition to being assessed higher in proportion than other real estate in the county.

2. Because the court erred in holding that there was no discrimination in the assessment of the property of the complainant, and used as an apparent basis of determination of this point the assessed values of other mill properties, not shown to be identical with the property of complainant; and when the basis of determination shauld have been the assessment of other property in the county, and not merely [fol. 165] mill properties, and in holding that complainant appraised its real estate itself, when the law of North Carolina places this duty only on assessors, duly constituted.

Because if value stated on list by taxpayer constitutes an assessment then such assessment in this case was not changed, and could not be changed without a hearing after specific notice of proposed raise, and in this case no such notice was given, as only notice given related to personal property.

4. Because the Court erred in holding that it was not necessary to go in to the merits of the matter, and that the action of the taxing authorities of Rutherford County had not been in violation of either the Fifty or the Fourteenth Amendment to the Constitution of the United States, and

that complainant had no standing in this Court, on account of having an adequate remedy at law in the Courts of the State of North Carolina, and also an equitable remedy in the State Courts, when the test is as to whether or not there was an adequate remedy at law in the Federal Court, a Federal question having been raised in the bill of complaint.

5. Because the Court erred in holding that complainant failed to appear properly before the county commissioners sitting as a board of supervisors and make protest, when the laws of the State of North Carolina gave complainant a certain time within which to make complaint and application for reassessment to the County Board of Equalization and such complaint and application for reassessment was made strictly in accordance with the law as appeared from complainant's affidavits, and complainant should have been allowed a hearing as demanded, and in holding that there was no right on the part of complainant to seek relief in the Federal Court.

6. Because the Court erred in refusing to grant the complainant an Interlocutory Injunction as prayer for in the Bill, a Federal question having been raised, and sufficient evidence having been produced before the Court to warrant and require the granting of such interlocutory injunction pending a final hearing, and in dismissing the complainant's suit.

[fol. 166] Wherefore complainant prays that the said order of the District Court be reversed.

(S.) Willis Smith, (S.) W. T. Joyner, Solicitors for complainant.

Service accepted and copy received this July 23, 1928.
Quinn, Hamrick & Harris, Solicitors for Defendants.

IN UNITED STATES DISTRICT COURT

MEMORANDUM OF CLERK

Notice of Appeal, Petition for Appeal and Order allowing appeal and fixing amount of bond entered and filed July 23rd, 1928.

Supersedeas and cost bond executed, approved, and filed September 20th, 1928; dated September 20th, 1928; penalty: Forty thousand dollars ($40,000.00); obligors: The Henrietta Mills and National Surety Company of New York City, N. Y.; conditioned to pay damages and costs.

Citation dated September 15th, 1928.

IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD

In the above entitled cause both the Complainant, and the Defendants having heretofore within apt time filed and served the Praecipe of each on the other, and the time for [fol. 167] making up and filing the record in this cause in the Circuit Court of Appeals having been duly and properly extended, and having thereafter reached an agreement as to what shall go into the record, it is hereby stipulated by counsel for both Complainant and Defendants, that the Clerk may make up a single transcript to contain the following papers and records:

1. Equity Subpœnas in the cause.
2. Bill of Complaint.
3. Application for Interlocutory Injunction.
4. Answer of Defendants.
5. Statement of the evidence filed by the Complainant and served on the defendants, together with "Exhibit A" hereto attached which is to be substituted for Exhibit entitled "Complainant introduced in evidence a certified copy of the minutes of the Board of Commissioners of the County of Rutherford appearing on pages 65 to 69, inclusive, of Book 10 of the Register of Deeds' office of Rutherford County, etc."

There is to be included in the evidence a copy of the notice mailed to The Henrietta Mills on July 2nd, 1927, by George Biggerstaff and others, County Supervisors and Assessors for Rutherford County, to which is attached the original Tax return of The Henrietta Mills for the year 1927, showing the change in valuation for taxation of the real estate, machinery, buildings, tenements, etc.,

as made by the taxing authorities of Rutherford County, and shall be made a part of this record by making and including therein a photostatic copy of said return as amended and of the carbon of said notice which defendants contended was attached to a copy of said amended return and mailed to the plaintiff; the plaintiff contending that copy of said tax return as amended did not accompany said notice and was not received by plaintiff.

6. Order and opinion of his Honor E. Y. Webb, United States District Judge.

[fol. 168] 7. Assignment of errors and Complainant.

8. There is to be furnished by the Complainant an indemnifying and appeal bond with sufficient surety, in the sum of Forty Thousand ($40,000.00) Dollars guaranteeing the payment of all taxes due Rutherford County by The Henrietta Mills for the year 1927, together with interest at the rate of six per cent per annum from and after the 16th day of June, 1928, th date of the order of His Honor E. Y. Webb, denying the application for an injunction and dismissing the case as instituted in the District Court; said bond also to contain the usual other provisions indemnifying the Appellee against all costs which the Appellee may incur by reason of said appeal.

9. It is agreed that the County of Rutherford will not levy or arvertise, on the pr-perty of the Complainant for 1927 taxes pending the termination of this appeal; the Court having intimated that the Count- of Rutherford would be restrained should levy or advertis-ment be commenced pending this appeal.

10. All captions shall be ommit-ed and placed on cover of record.

11. It is agreed that there shall be considered as a part of the case on appeal a recital of the fact that when the matters in controversy in this cause come up for hearing before his Honor E. Y. Webb, Judge of the District Court for the Western District of North Carolina, that the statement was made by the Attorneys for the Appellee that at the hearing of this controversy before the State Board of Assessment in Raleigh prior to the institution of this suit in the Federal Court that the Attorneys for The Henrietta Mills inquired of the Attorneys for the County of Rutherford as to whether or not the valuation placed on the per-

sonal pr-perty of The Henreitta Mills in the tax return of said Mills for the year 1927, in the amount of $513,584.00 had been increased by the taxing authorities of Rutherford County, or whether or not the valuation contended for, for taxation, of the property of The Henreitta Mills in excess of the total valuation placed on the pr-perty of [fol. 169] The Henreitta Mills by said The Henreitta Mills in said tax return affected only the real estate, machinery, buildings, tenements, etc.; whereupon the Attorneys for the County of Rutherford stated to the Attorneys for The Henrietta Mills that the County of Rutherford had accepted for the purposes of taxation the valuation of the personal property in the sum of $513,584.00 placed thereon by The Henrietta Mills and that the only controversy between the parties as to valuation was as to the valuation of the real estate, machinery, buildings, tenements, etc.; whereupon the argument of counsel before the State Board of Assessment was made as to the valuation of $2,124,-235.00 placed by the taxing authorities of Rutherford County upon said real estate, machinery, buildings, tenements, etc., which said valuation The Henreitta Mills contended had not been properly made and deemed to be excessive. And which said valuation was, after hearing reduced by the State Board of Assessment to the sum of $1,849,235.00.

That upon the foregoing statement being made, the Attorneys for the Appellant agreed that there was no disagreement as to the valuation of personalty, and that as to valuation the only controversy was as to the valuation for taxation for the year 1927 of the real estate, machinery, buildings, and tenements of The Henrietta Mills whereupon evidence was submitted as appears in the record.

Provided further, that this stipulation does not affect the right of the Complainant to contend that the notice of date the 2nd day of July 1927, as given, contsitutes a notice as to the raise of personalty and not as to the raise in real estate.

12. The Stipulation.

13. That the Clerk of the United States District Court for the Western District of North Carolina shall make up a transcript of the record in this suit and transmit the same to the Clerk of the United States Circuit Court of

Appeals for the Fourth Circuit at Richmond, Virginia, and that it shall be printed under the supervision of the Clerk of that Court in accordance with Rule 23.

[fols. 170-172] 14. It is agreed by and between the parties hereto that all matters and things required to be done in perfecting this appeal on the part of either party shall be considered as having been done within the proper time and all parties waive any right to take advantage of any failure on the part of any other party to do any of said acts or things within the proper time; all parties agreeing that up to the date of the filing of this Stipulation all matters and things have been done within the proper time.

Defendants waive citation and service thereof.

This the 15th day of September 1928.

Smith and Joyner, Solicitors for Complainant (Ap--ellant). Quinn, Hamrick & Harris, Solicitors for Defendants (Ap-ellee).

The foregoing agreement and stipulation is hereby approved and allowed.

This the 15th day of September 1928.

E. Y. Webb, United States District Judge.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 173] In United States Circuit Court of Appeals for the Fourth Circuit

No. 2803

The Henrietta Mills, Appellant,

versus

Rutherford County, in the State of North Carolina, and W. C. Hardin, Sheriff, Appellees

Appeal from the District Court of the United Staets for the Western District of North Carolina, at Charlotte

October 1, 1928, the transcript of record is filed and the cause docketed.

Same day, the original notice of appeal, petition for appeal, order allowing appeal, appeal bond and citation are certified up under Sec. 7 of Rule 14.

Same day, order extending time to the 5th day of October, 1928, for the filing of the transcript of record is filed.

Same day, the appearance of Willis Smith and W. T. Joyner is entered for the appellant.

October 5, 1928, the appearance of Quinn, Hamrick and Harris, and Clyde R. Hoey is entered for the appellees.

October 27, 1928, twenty-five copies of the printed record are filed.

[fol. 174] Minute entry of argument and submission Jan. 16, 1929, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 2803

THE HENRIETTA MILLS, Appellant,

versus

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, and W. C. HARDIN, Sheriff, Appellees

Appeal from the District Court of the United States for the Western District of North Carolina, at Charlotte

(Argued January 16, 1929. Decided May 2, 1929)

Before Waddill, Circuit Judge, and McDowell and Soper, District judges

OPINION—Filed May 2, 1929

[fol. 175] SOPER, District Judge:

The Henrietta Mills, a corporation of North Carolina, filed a bill of complaint in the District Court of the United States for the Western District of North Carolina, to enjoin and restrain Rutherford County, in that State, and its sheriff, from collecting from the corpora-

tion, or enforcing against its property, any claim for taxes for the year 1927, or any subsequent year, based upon an assessment of the property which tax officials of the county had made. The basis for federal jurisdiction is the claim that unless injunctive relief is granted as prayed, the corporation will be deprived of its property without due process of law, and be denied the equal protection of the laws by the State of North Carolina, in contravention of the Fourteenth Amendment of the Constitution of the United States.

The Constitution of North Carolina, Article V, Section 3, provides that laws shall be passed taxing by uniform rule, all real and personal property, according to its true value in money. Article VII, Section 9, provides that all taxes levied by any county, city or town, shall be uniform and ad valorem upon all property in the same, except property exempted. Section 7971 (46) of the Consolidated Statutes of North Carolina provides that it is the purpose of the tax laws of the State to have all property assessed at its true and actual value in money—that is, what the property would bring at cash sale when sold in the usual manner.

The bill of complaint charges that the actual value in this sense of the corporation's property in Rutherford County, North Carolina, on May 1, 1927, did not exceed $1,887,352; but it was actually assessed by officials of the county in 1927 at $2,637,819, in violation of the constitution and statutes of the State. The corporation therefore filed a complaint under the provisions of Section 7971 (89) against the assessment with the County Commissioners as a Board of Equalization and Review, objecting to the overvaluation of the property, but the Board declined and refused to hear and pass upon the questions presented by the complaint. Thereupon the corporation took an appeal under the provisions of Section 7971 (90) to the State Board of Assessment, which, after hearing, deducted the sum of $275,000, from the valuation of the assessors, and fixed the value of the corpo- [fol. 176] ration's property at $2,362,819. The complainant charges that the tax officials of the county, and of the state, have intentionally, systematically and arbitrarily fixed the value of the complainant's property greatly in

excess of its true value, and at the same time, have arbitrarily, intentionally and systematically fixed the assessment value of practically all other assessable property in Rutherford County, at only 60% of its true value; that the assessment on complainant's property should be reduced to 60% of its true value, that is to say, to the sum of $1,132,411.20; and that any assessment for the year 1927 or subsequent years in excess of said sum is an arbitrary, intentional and systematic taking of its property contrary to the provisions of the federal constitution. The complainant paid to Rutherford County, through the sheriff, the sum of $26,894.77, which is equal to the tax fixed by the officials of the said county upon a valuation of $1,132,411.20, without prejudice to its claim that said payment should constitute full payment for all taxes due by it to the county.

The answer of the defendant denies that there has been an arbitrary and intentional overvaluation of the complainant's property, or an unlawful discrimination in the assessment of that property in comparison with other property in the county and state, and asserts that if the complainant was aggrieved by the decision of the tax officials, it had an adequate remedy at law under Section 7979 of the Consolidated Statutes of North Carolina, and hence the United States District Court was without jurisdiction of the equitable action.

Affidavits in support of the bill were offered by the complainant and counter affidavits by the respondents. The District Court found as a conclusion of fact upon these affidavits that there was no unlawful or unjust discrimination by the tax officials in determining the value of the complainant's property, and being of the opinion that in any event the complainant had an adequate remedy at law under the statutes of North Carolina, not merely refused the injunction, but also dismissed the bill of complaint. From this decree an appeal was taken. The important question before the court therefore is whether the bill of [fol. 177] complaint states a cause of action which entitles the complainant to proceed in the federal court in equity.

The bill of complaint does make out a case within the jurisdiction of the federal court, for it states a substantial controversy under the Fourteenth Amendment to the Con-

stitution of the United States. If the allegations are true, the complainant has been denied the equal protection of the laws by the tax officials of Rutherford County, whose action in this respect must be considered to be the action of the State. Raymond vs. Chicago, etc. Co., 207 U. S. 20; Greene vs. Louisville &c. Co., 244 U. S. 499; Johnson vs. Wells-Fargo & Co., 239 U. S. 234; Furthermore, it is well settled that a federal court of equity may properly interfere to restrain the violation of a taxpayer's rights by an unconstitutional exercise of the taxing powers unless there be a plain, adequate and complete remedy at law available to the taxpayer in the federal court. Cummings vs. Merchants National Bank of Toledo, 101 U. S. 153, 157; Raymond vs. Chicago, etc., Co., 207 U. S. 20; Southern Ry. Co. vs. Query, 21 F. (2d) 333; Chicago, B. & Q. R. R. vs. Osborne, 265 U. S. 14; Risty vs. Chicago, R. I. & P. Ry. Co., 270 U. S. 378, 388; Bohler vs. Callaway, 267 U. S. 479.

The decisions of the Supreme Court indicate a proper reluctance to interfere by intervention with the fiscal operations of the state governments, and the federal courts have refrained from doing so when the federal rights of persons could be otherwise preserved. So it has been held that if a statute of the offending state imposes upon the state officials the duty to refund taxes illegally collected, and confers upon the taxpayer a right to enforce that duty by an action at law, the remedy is adequate and a suit in equity to enjoin the collection of the tax will not lie. Boise Artesian Water Co. vs. Boise City, 213 U. S. 276; Singer Sewing Machine Co. v. Benedict, 229 U. S. 481; Keokuk Bridge Co. vs. Salm, 258 U. S. 122.

North Carolina has enacted such a statute. See Consolidated Statutes of North Carolina, Section 7979, which provides as follows:

"Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or unauthorized [fol. 178] purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the non-payment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner

thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff, but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of the state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer."

It is obvious that the remedy by an action at law to recover a tax illegally exacted, which this statute affords, is as full and complete as those which, in the cases cited, were held to forbid access to the equity court. Moreover, the remedy is one which in the instant case may be pursued in the federal court because although there is no diversity of citizenship, the matter in controversy arises under the constitution of the United States. Keokuk Bridge Co. vs. Salm, 258 U. S. 122; Green vs. Louisville &c. Co., 244 U. S. 499; Judicial Code, Section 24 (1). The rule is that where there has been a legal wrong without at common law a corresponding legal remedy, state legislation may [fol. 179] supply one and the federal courts will enforce it. Singer Sewing Machine Co. vs. Benedict, 229 U. S. 481; Chicago, B. & Q. R. R. vs. Osborne, 265 U. S. 14; Risty vs. Chicago, R. I. & P. Ry. Co., 270 U. S. 378, 388.

The complainant, however, contends that under the circumstances of this case, the remedy at law is inadequate because it will not obviate a multiplicity of suits. The North Carolina statute, Section 7971, (80) provides for a quad-

rennial assessment by the Board of County Commissioners of each county; and hence it is argued that even if complainant should be successful in its suit at law under Section 7979, and should recover a judgment against the county for the amount of the tax illegally exacted, to be collected as in other cases, nevertheless the assessment would still remain as the basis of additional illegal claims which the county could set up during the succeeding three years. But this contention is not well founded for if it should be determined by a suit at law that the assessment is invalid, the controversy between the parties would be settled by a court of competent jurisdiction and it is fair to assume that the tax officials of the state would give effect to the decision. The circumstances were far different in the cases in which the Supreme Court has held the remedy at law to be inadequate because it would not prevent a series of suits against tax officials of different counties or would not determine the whole controversy between the parties. See Raymond vs. Chicago &c. Co., 207 U. S. 20; Wilson vs. Ill. So. Ry., 263 U. S. 574.

The complainant further contends that even if the remedy at law be adequate, nevertheless Section 7979 of the North Carolina statute expressly recognizes a proceeding in equity in the state court, and furnishes a new remedy which the federal courts will also enforce. It will be observed that the North Carolina statute authorizes the state court to grant an injunction only in exceptional cases for it is provided that no injunction shall be granted by any court to restrain the collection of a tax or assessment unless it is illegal or invalid or assessed for an illegal or unauthorized purpose. Many decisions of the Supreme Court of North Carolina, in which the statute has been applied, have been cited. In some of them the validity of a tax has been assailed, and [fol. 180] the plaintiff having paid it under protest, has sued for its recovery, and the court has held this legal remedy to be appropriate. See Express Co. vs. Charlotte, 186 N. C. 668; R. R. vs. Cherokee Co., 177 N. C. 86; Brunswicke Balke Co. vs. Mecklenburg Co., 181 N. C. 386; Blackwell vs. Gastonia, 181 N. C. 378. On the other hand, the procedure for equitable relief by way of injunction has been applied without controversy, or has been held to be proper in Sherrod vs. Dawson, 154 N. C. 528; Purnell vs. Page, 133 N. C. 125; Range Co. vs. Carver, 118 N. C. 328, 331; R. R. vs. Com-

missioners, 148 N. C. 220; R. R. vs. Commissioners, 188 N. C. 265. In the last mentioned case, the appropriateness of the equitable remedy was not questioned and the court said in passing that in North Carolina a taxpayer might contest the validity of an assessment or collection of tax upon his property either by paying the tax under protest, and suing for its recovery, or by applying for injunctive relief. In Purnell vs. Page, supra, the court said that an injunction would lie for three reasons, to-wit: (1) if the tax or any part thereof be assessed for an illegal or unauthorized purpose; (2) if the tax itself be illegal or invalid; (3) if the assessment of the tax be illegal or invalid. The appellant urges that these decisions show that the taxpayer has the option in any case to seek injunctive relief. But in the more recent case of Ragan vs. Doughton, 192 N. C. 501, it was held that an injunction was not the proper remedy for a person resisting the collection of a license tax for engaging in the real estate business, but that he should pay the tax under protest and sue for its recovery. The court indicated that under a fair interpretation of the decisions, one who challenges only the administration of the law should not seek to enjoin the collection of the tax but should pay it under protest and then sue to recover it back. See also Marion vs. Pilot Mountain, 170 N. C. 118.

Hence it would seem that the dividing line between the legal and the equitable remedy under the statute has not been clearly marked in North Carolina, doubtless because of the abolition under the North Carolina constitution of the procedural distinction between actions at law and suits in equity. N. C. Const., Art. IV, Sec. 1. But if we assume, for the sake of the argument, that the taxpayer in the instant case has the choice in the state court to bring his action in [fol. 181] either form as may best suit his convenience, it does not follow that he has the same choice in the federal court. He must still reckon with the well established rule, now codified in the Judicial Code, Section 267, that suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate and complete remedy may be had at law. The complainant while recognizing that this rule ordinarily obtains, relies on certain statements in the decisions of the federal courts, and especially upon Cummings vs. National Bank, 101 U. S. 153.

The National Bank had brought a bill in equity to enjoin the collection of a tax wrongfully assessed against the shares of the stockholders, payment of which was demanded of the Bank. It was suggested that the court did not have equitable jurisdiction because there was an adequate remedy by paying the money under protest and suing at law to recover it back. But the court showed that the remedy was not adequate because the Bank would be paying the money as agent for the stockholders and might be the subject of a separate suit by each stockholder or might be required by separate suits to collect from each the amount paid in his behalf. Hence it was held that equity might interfere to prevent a multiciplicity of suits. The court then referred to a relevant Ohio statute in the following language (page 157):

"But the statute of the State expressly declares that suits may be brought to enjoin the illegal levy of taxes and assessments or the collection of them. Section 5848 of the Revised Statutes of Ohio, 1880; vol. liii Laws of Ohio, 178, sects. 1, 2. And though we have repeatedly decided in this court that the statute of a State cannot control the mode of procedure in equity cases in federal courts, nor deprive them of their separate equity jurisdiction, we have also held that, where a statute of a State created a new right or provided a new remedy, the Federal courts will enforce that right either on the common law or equity side of its docket, as the nature of the new right or new remedy requires. Van Norden vs. Morton, 99 U. S. 378. Here there can be no doubt that the remedy by injunction against an illegal tax, expressly granted by the statute, is to be enforced, and can only be appropriately enforced on the equity side of the court."

[fol. 182] More recently, the rule seemingly announced in Cummings vs. National Bank, has been applied in North Side Canal vs. State Board of Equalization, 17 F. (2d) 55, 58, (8th C. C. A.). On the other hand, in an earlier decision in that circuit, McLaughlin vs. St. Louis Southwestern R. Co., 232 Fed. 579, it was pointed out that the authority of Cummings vs. National Bank had been somewhat shaken by the later case of Whitehead vs. Shattuck, 138 U. S. 416. We think the last mentioned case sets out the correct rule. Provisions of the constitution or statutes of a state which

create new substantive rights may be enforced in proper cases on the appropriate side of the federal court, and in this way, the field of that court's activities may be enlarged; but state enactments, which relate only to judicial remedies, can neither enlarge nor restrict the jurisdiction of a federal court in equity. The whole matter has been made clear by the decision of the Supreme Court in Pusey & Jones vs. Hanssen, 261 U. S. 491. A statute of the State of Delaware empowered the chancellor to appoint a receiver for an insolvent corporation on the application of an unsecured simple contract creditor; but the Supreme Court held that this statute did not authorize such a creditor to maintain such a suit in equity in the federal court because it provided merely an equitable remedy not available to him until he had recovered a judgment in a suit at law and an execution thereon had been returned unsatisfied. The court said (pages 497-8, 499, 500):

"That a remedial right to proceed in a federal court sitting in equity cannot be enlarged by a state statute is likewise clear. Scott vs. Neely, 140 U. S. 106; Cates vs. Allen, 149 U. S. 451. Nor can it be so narrowed, Mississippi Mills vs. Cohn, 150 U. S. 202; Guffey vs. Smith, 237 U. S. 101, 114. The federal court may therefore be obliged to deny an equitable remedy which the plaintiff might have secured in a state court. (The oft-quoted statement in Davis vs. Gray, 16 Wall. 203, 221: "A party by going into a National court does not lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality," must be taken with this qualification. See also Ex parte McNiel, 13 Wall. 236, 243; Case of Broderick's Will, 21 Wall. 503, 520). Hanssen's contention is that the statute does not enlarge the equitable jurisdiction or remedies; and that it confers upon creditors of [fol. 183] a Delaware corporation, if the company is insolvent, a substantive equitable right to have a receiver appointed. If this were true, the right conferred could be enforced in the federal courts, Scott vs. Neely, 140 U. S. 106, 109; since the proceeding is in pleading and practice conformable to those commonly entertained by a court of equity. But it is not true that this statute confers upon the creditor a substantive right."

* * * * * * *

"But because that which the statute confers is merely a remedy, the statute cannot affect proceedings in the federal courts sitting in equity.

The case is wholly unlike Louisville & Nashville R. R. Co. vs. Western Union Telegraph Co., 234 U. S. 369; and other cases in which federal courts, because of a state statute, entertained suits to remove a cloud upon title, which otherwise must have been dismissed. In those cases, as pointed out in Clark vs. Smith, 13 Pet. 195, 203, the statute changed a rule of substantive law."

* * * * * * *

"But where a state statute relating to clouds upon title is held merely to enlarge the equitable remedy, it will not support a bill in equity in the federal court. Thus, in Whitehead vs. Shattuck, 138 U. S. 146, the statute relied upon authorized a suit in equity by one out of possession against one in possession. As an action at law in the nature of ejectment afforded an adequate legal remedy, the bill to quiet title was dismissed."

It is obvious that the North Carolina statute, insofar as it authorizes the taxpayer to bring a suit for an injunction to restrain the collection of a tax, does not confer a substantive legal right, but merely provides a legal remedy. It follows, under the later decisions of the Supreme Court, that this enactment cannot affect the fundamental rule of equitable jurisdiction in the federal court that a complainant may not sue in equity if he has an adequate remedy at law. Since such a remedy exists under the circumstances of the case at bar, the complainant was not entitled to equitable relief.

[fol. 184] Nor is the case of the complainant any stronger if it be considered that the allegations of the bill of complaint are tantamount to a charge of fraud. There is no doubt that in a proper case, fraud constitutes a distinct and well recognized ground of equitable jurisdiction. See Johnson vs. Wells-Fargo & Co., 239 U. S. 234, 244, where there was not merely a charge of fraud but a continuing violation of constitutional rights which afforded a basis for equitable relief. This decision, however, was not intended to change the well settled rule that the federal courts in equity do not take jurisdiction even in cases of fraud where

relief can be obtained in a court of law. See Curriden vs. Middleton, 232 U. S. 633; Equitable Life Assur. Soc. vs. Brown, 213 U. S. 25, 50; U. S. vs. Bitter Root Co., 200 U. S. 451; Insurance Co. vs. Bailey, 13 Wall. 616.

The bill of complaint was properly dismissed by the District Court, and its decision is affirmed.

In United States Circuit Court of Appeals, Fourth Circuit

No. 2803

The Henrietta Mills, Appellant,

vs.

Rutherford County, in the State of North Carolina, and W. C. Hardin, Sheriff, Appellees

Decree—Filed and entered May 2, 1929

[fol. 185] This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, affirmed with costs.

May 2nd, 1929.

Edmund Waddill, Jr., Senior Circuit Judge.

June 1, 1929, petition of appellant for a stay of the mandate is filed.

In United States Circuit Court of Appeals

Order Staying Mandate—Filed June 1, 1929

Upon the application of the appellant, by Smith & Joyner, Esqs., its counsel, and for good cause shown,

It is ordered that the mandate of this Court in the above cause be, and the same is hereby, stayed pending the application of the Appellant in the Supreme Court of the United States for a writ of certiorari to this Court, unless other-

wise ordered by this Court or the said Supreme Court, and provided said application is filed in the said Supreme Court within 40 days from this date.

Edmund Waddill, Jr., Senior Circuit Judge.

June 1st, 1929.

[fol. 186] In United States Circuit Court of Appeals

Order Further Staying Mandate—Filed July 8, 1929

Upon the application of the Appellant, by Smith & Joyner, Esqs., its counsel, and for good cause shown,

It is ordered that the mandate of this Court in the above cause be, and the same is hereby, further stayed pending the application of the Appellant in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this Court or the said Supreme Court, and provided said application is filed in the said Supreme Court on or before July 31, 1929.

Elliott Northcott, U. S. Circuit Judge.

July 8, 1929.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 187] Supreme Court of the United States

Order Allowing Certiorari—Filed October 21, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,401. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 270. The Henrietta Mills, petitioner, vs. Rutherford County, in the State of North Carolina, and W. C. Hardin, Sheriff. Petition for writ of certiorari and exhibit thereto. Filed July 29, 1929. File No. 34,401.

FILE COPY

FILED
JUL 29 1929
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1929

No. 270

THE HENRIETTA MILLS,

Petitioner,

v.

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA AND W. C. HARDIN, SHERIFF.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE FOURTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

MURRAY ALLEN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

October Term, 1929.

No.------

THE HENRIETTA MILLS, PETITIONER,
v.
RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA AND W. C. HARDIN, SHERIFF.

PETITION FOR WRIT OF CERTIORARI

May it Please the Court:

The petition of The Henrietta Mills respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

The Henrietta Mills is a North Carolina corporation owning property in Rutherford County in said State. As complainant it filed a bill of complaint in the District Court of the United States for the Western District of North Carolina seeking to restrain and enjoin Rutherford County and its sheriff from levying upon its property and selling same in an effort to collect taxes for the year 1927 based on an alleged unlawful assessment of its property by the tax officials of that county, as finally partially reduced and approved by the State Tax Commission of North Carolina. It bases its claim for Federal jurisdiction on the contention that unless injunctive relief is afforded as prayed, the corporation will be deprived of its property without due process of law,

and be denied the equal protection of the laws by the State of North Carolina and the officials of Rutherford County in contravention of the Fourteenth Amendment to the Constitution of the United States.

The opinion of the Circuit Court of Appeals holds that the bill of complaint does make out a case within the jurisdiction of the Federal Court, stating a substantial controversy under the Fourteenth Amendment to the Constitution of the United States. It holds that if the allegations are true, the complainant has been denied the equal protection of the law by the tax officials of Rutherford County, whose action in this respect must be considered to be the action of the State.

Under the Constitution of North Carolina, Article V, Section 3, it is provided that:

> "Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property, according to its true value in money; . . ."

The Constitution further provides by Article VII, Section 9, that:

> "All taxes levied by any county, city, town, or township, shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution."

Section 7971 (46) of the Consolidated Statutes of North Carolina contains a provision that it is the purpose of the tax laws of the State to assess all property at its true and actual value in money—that is, what the property would bring at cash sale when sold in the usual manner.

The complainant contends that the actual value of its property in Rutherford County, North Carolina, on May 1st, 1927, the tax listing date, did not exceed $1,887,352.00; but the property was actually assessed by officials of the county in 1927 at $2,637,819.00, in violation of the rights of the complainant both under the Constitution of the United States

and of North Carolina and under the Statutes of the State. The complainant filed a complaint with the County Board of Equalization and Review under the provisions of the law, Section 7971 (89), in which it objected to the over-valuation of its property. The Board thereupon declined and refused to hear complainant or to pass upon the question presented by its complaint of over-valuation. Thereafter, in accordance with the statutory provision the Henrietta Mills appealed to the State Board of Assessment under Section 7971 (90) of the Consolidated Statutes, which, after a hearing contended by the complainant to have been superficial, reduced the assessment by $275,000.00 and fixed the value of the complainant's property at $2,362,819.00.

The complainant charged in its complaint that the tax officials of the county and of the State had intentionally, systematically and arbitrarily fixed the value of complainant's property greatly in excess of its true value while at the same time allowing or fixing the value of practically all other property liable for taxes in Rutherford County at only 60% of its true value. Complainant contended that its assessment should be reduced to sixty per cent of its true value, or to the sum of $1,132,411.20; and that any assessment for the year 1927, in excess of said sum is an arbitrary, intentional, and systematic taking of complainant's property in violation of the constitutional rights under both Federal and State Constitutions.

The complainant paid to Rutherford County through the sheriff the sum of $26,894.77 which is equal to the tax fixed by the officials of the county upon the valuation of $1,132,411.20, said payment being made without prejudice to the rights of either the complainant or the defendants.

The defendants deny that there has been an arbitrary and intentional over-valuation of complainant's property or any discrimination in the assessment of the property as compared with other property in the County and State. The defendants then contend that if the complainant was aggrieved by the decision of the tax officials, it had an adequate remedy at law

under Section 7979 of the Consolidated Statutes of North Carolina, which provides for payment of tax under protest and suit to recover, and that, therefore, the United States District Court did not have jurisdiction of the equitable action.

Numerous affidavits, many of them by other taxpayers of Rutherford County, were offered in support of the contentions of the complaint, and the complainant insisted that the evidence as appears in the record was overwhelming in support of its contention both as to over-valuation and as to discrimination with other property. However, the District Court found that the complainant had an adequate remedy at law, and dismissed both the petition for an Interlocutory Injunction and the Bill. Whereupon, the complainant appealed to the Circuit Court of Appeals for the Fourth Circuit, which affirmed the holding of the District Court on the theory that complainant had an adequate remedy at law, and that Sec. 267 of the Judicial Code forbade equity jurisdiction.

Section 7979 providing for the payment of tax under protest and suit to recover is somewhat lengthy and is found on page 17 as "Appendix A."

B.

Reasons Relied on for the Allowance of the Writ.

1. The holding of the Circuit Court of Appeals of the Fourth Circuit in this case is in conflict with the holding of the Circuit Court of Appeals of the Sixth Circuit, the Eighth Circuit and of various other Federal Courts as set forth in the brief in support of this petition.

2. The Circuit Court of Appeals misinterpreted the decisions of the North Carolina Supreme Court as they affected the case at bar, such decisions being cited and referred to in the brief in support of this petition.

3. The construction placed on Section 267 of the Judicial Code, USCA Title 28, Section 384, stating that:

> "Suits in equity shall not be sustained in any Court of the United States in any case where a plain, adequate and complete remedy may be had at law,"

is in conflict with the holding of other Federal Courts as to the proper construction of that section of the Judicial Code.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals of the Fourth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day set to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 2803, The Henrietta Mills, Appellant, v. Rutherford County, in the State of North Carolina, and W. C. Hardin, Sheriff, Appellees, and that the said judgment of the Circuit Court of Appeals for the Fourth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

THE HENRIETTA MILLS,

By MURRAY ALLEN,
Counsel for Petitioner.

WILLIS SMITH,
W. T. JOYNER,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

October Term, 1929

No.------

THE HENRIETTA MILLS, PETITIONER,

v.

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA AND W. C. HARDIN, SHERIFF.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

The Opinions of the Courts Below.

The opinion of the Circuit Court of Appeals is reported in the Federal Reporter Advanced Sheets for June 27th, 1929, Volume 32, (2d) Page 570. The opinion was handed down on May 2nd, 1929, and appears in the Record, p. 174. The opinion of the District Court appears in the Record, p. 160.

II.

Jurisdiction.

1. Petition for writ of certiorari in this case is based on Judicial Code, Section 240, as amended by the Act of February 13th, 1925, 43 Stats. 938; USCA Title 28, Section 347.

2. The date of the judgment to be reviewed is May 2nd, 1929 (R., 184).

3. The bill of complaint sets forth that this is a case arising under the Constitution of the United States and the Fourteenth Amendment thereof (R., p. 4), and the opinion of the Circuit Court of Appeals (R., p. 177), recites that the bill of

complaint does state a cause of action under the Constitution of the United States. The ruling of the court below, however, was in conflict with the ruling of the Circuit Court of Appeals of the Sixth Circuit in the case of *Grether v. Wright*, 75 Federal Reporter, 742; and of the Eighth Circuit in the case of *North Side Canal Co. v. State Board*, 17 Federal Reporter (2d) 55, and other Federal Courts, and the said ruling was also contrary to the holding of the Supreme Court of North Carolina on the question of when equitable remedy is available.

4. The cases believed by complainant to sustain the jurisdiction are cited herein in connection with the argument.

III.

Statement of the Case.

A statement of the case is set forth under the heading "A" in the Petition for the Writ of Certiorari stating concisely and yet in sufficient detail the facts in the case. For the sake of brevity this statement will not be repeated here.

The Court held that there was no merit to the complainant's contention that without the intervention of a court of equity a multiplicity of suits might develop by reason of the fact that the assessment was a quadrennial one and that taxes for four years would be computed on the basis of the quadrennial assessment.

The complainant contends that its property is grossly overassessed and at a valuation far in excess of its true value, while the property of other taxpayers generally in Rutherford County is assessed at 60% of its true value. This contention was supported by an overwhelming amount of evidence, as appears in the record, an examination of which, p. 72, *et seq.*, gives a slight indication of the basis of assessment generally for property in Rutherford County. The financial statements of the county as set forth in the record, pages 98 and 102, indicate the basis of assessments on property as a whole in the county and the affidavits of numerous citizens, record pages

95-110, bear out the contention of the complainant that property generally is assessed on a basis of 60% of its value, while the property of complainant is assessed at more than 100% of its value, as shown by the testimony of Prof. Nelson, Record, p. 52, and other witnesses. The complaint appears in the Record, pages 5-19, and the answer in the Record, pages 19-38.

IV.

Specification of Errors.

1. The Circuit Court of Appeals erred in finding and holding that complainant had an adequate remedy at law and was, therefore, not entitled to equitable relief in the Federal Court.

2. The Circuit Court of Appeals erred in finding and holding that complainant was not entitled to equitable relief on account of Section 267 of the Judicial Code, USCA Title 28, Sec. 384.

3. The Circuit Court of Appeals erred in finding and holding that under the decisions of the Supreme Court of North Carolina complainant would not be entitled to equitable relief, the Circuit Court of Appeals having confused the rights and remedies of an ad valorem taxpayer, such as complainant, with those of a license taxpayer under the North Carolina law.

4. The Circuit Court of Appeals erred in finding and holding that the remedy by an action at law provided for by Sec. 7979 of the Consolidated Statutes was such as to forbid access to a Federal Court of equity.

5. The Circuit Court of Appeals erred in affirming the decision of the District Court, and dismissing the bill.

V.

Argument

In order to set out clearly the points involved and the reasons and authorities cited thereunder the argument is summarized as follows:

Summary of the Argument

A. The decision of the Circuit Court of Appeals for the Fourth Circuit is contrary to and in conflict with the holding of other Federal Courts.

B. The law of North Carolina recognizes injunctive relief, and the ruling of the Supreme Court of North Carolina under similar state of facts is not as construed in the decision of the Circuit Court of Appeals.

A.

CONFLICT WITH DECISIONS OF OTHER FEDERAL COURTS

The Court below held that complainant was not entitled to equitable relief because it had an adequate remedy at law. It found that this adequate remedy at law was available under Section 7979 of the Consolidated Statutes of North Carolina; which statute is set forth in Appendix A, and the most pertinent part of which provides:

> "Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the non-payment thereof."

It will be noted that the North Carolina statute providing for payment of taxes under protest, C. S., Sec. 7979, does not hold that no injunction shall lie, but recognizes injunctive relief where the assessment or some part thereof is illegal or invalid. The Court's attention is directed to the opinion of *Mr. Chief Justice Taft*, while he was Circuit Judge, in the case of *Grether, et al. v. Wright, et al.*, 75 F., 742. That was a case somewhat similar to the case at bar, and the Ohio statute recognized injunctive relief, as does the North Carolina statute, although in different language. In this opinion *Mr. Justice Taft* discussed the case of *Cummings v. Bank*, 101 U. S., 153; *Shelton v. Platt*, 139 U. S., 591; *Whitehead*

v. Shattuck, 138 U. S., 146, and other cases, drawing clear distinctions between the holdings of the Court in those cases, and reached the conclusion that the complainant was entitled to equitable relief. He stated clearly the reason for and the proper construction to be given to Section 267 of the Judicial Code, providing that:

> "Suits in equity shall not be sustained in any Court in the United States in any case where a plain, adequate, and complete remedy may be had at law."

He showed that the object and reason of that statute was to protect a party in his right to a trial by jury and that the statute did not apply where the laws of the State recognized injunctive relief, and where right to trial by jury would not be affected.

In the case of *North Side Canal Company v. State Board of Equalization,* a case from the Circuit Court of Appeals for the 8th Circuit, reported in 17 F. (2d) 55, equitable relief under very similar circumstances was allowed, and a petition to this Court for writ of certiorari was denied April 25, 1927, 274 U. S., ____, 71 L. Ed. 1320. The statute of Wyoming was cited, as was also the case of *Cummings v. Bank, supra,* and *Grether v. Wright, supra,* and other cases holding to like effect. The oft repeated expression from *Davis v. Gray,* 16 Wall., 203, 21 L. Ed., 447.

> "A party by going into a national Court does not lose any right or property of which he might have availed himself in the State Courts in the same locality,"

is cited, as is also the expression in *Dawson v. Kentucky Distilleries,* 255 U. S., 288,

> *"And if the equitable remedy was available in the State Courts, it was not lost by suing in the Federal Court."*

The opinion of the court below seemed to have been based upon Section 267 of the Judicial Code, *supra,* and the decision in *Pusey & Jones v. Hanssen,* 261 U. S., 491. Complainant,

however, contends that the *Pusey & Jones case* is not an authority on the case at bar, for the reason that that was a case where a simple contract creditor was endeavoring to have a Receiver appointed on a simple unsecured debt, which remedial practice was not recognized under the Federal law, but which remedy was given by a recent statute of Delaware, authorizing the Chancellor of its Court of Equity to appoint a Receiver under such circumstances. The Court properly held that that was not a case for equitable relief in the Federal Court. In that case Pusey & Jones were entitled to a trial by jury first to determine whether or not the claim of Hanssen was valid. It was for that reason and in that view of the case that the Supreme Court refused to allow equitable relief.

On the other hand, the cases of *Grether v. Wright* and *North Side Canal Company v. State Board, supra,* held that equitable relief was proper, and the holdings in those two circuits are in direct conflict with the holding in the case at bar.

Furthermore, it must be borne in mind that this complainant is not asking the Federal Court to exercise its jurisdiction on account of any new remedy such as was the case in the *Pusey & Jones v. Hanssen case.* Rather, it is asking the Court to afford it equitable relief in a case where its rights under the Constitution of the United States are about to be invaded, the Circuit Court of Appeals having found that the bill of complaint does state a cause of action arising under the Constitution. We think that the Court was in error in deciding this case on the basis of the decision in the *Pusey & Jones case.*

Injunctive relief has been recognized as proper in the Federal Court in somewhat similar cases in many jurisdictions, and it has been held, that, except where right to trial by jury would be affected, that the Federal Courts would grant equitable relief, if such relief was recognized in the State Courts and by State law:

Grover v. Merritt Development Co., (Minn.), 7 Fed. (2d), 917.

West. Union Telegraph Co. v. Tax Commission, (Ohio), 21 Fed. (2d), 355.

Connecting Gas Co. v. Imes (Ohio), 11 Fed. (2d), 191.

The Court in *Meyers v. Shields,* (Ohio), 61 Fed., 713 discusses *Shelton v. Platt, supra,* and distinguishes by showing that in Tennessee there was an act prohibiting any remedy except at law as provided for. *City Railway Co. v. Beard* (Ohio), 293 Fed., 488, held that equitable relief was to be granted if the remedy at law was doubtful and defined "adequate."

B.

THE CIRCUIT COURT OF APPEALS MISINTERPRETED THE RULING OF THE NORTH CAROLINA SUPREME COURT ON THE QUESTION OF INJUNCTIVE RELIEF

In the opinion of the Court below the case of *Ragan v. Doughton,* 192 N. C., 501, was cited as holding against the contention of the complainant that injunctive relief was recognized by the North Carolina Court. It is respectfully suggested that the Court below misunderstood the ruling in *Ragan v. Doughton* because that opinion dealt with a case arising under Section 30, Chapter 101, of the Public Laws of 1925, being the biennial revenue act of North Carolina, and the question was whether or not the plaintiff in that case came within the designation of the taxing act as had been ruled by the Revenue Department. Chief Justice Stacy said in part:

> "We think a fair interpretation of the pertinent decisions, construing the statutes applicable, would be to say that where the legality of the tax, or the legality of the assessment, or the purpose for which the tax is assessed or authorized, is not assailed, but the taxpayer merely contends, contrary to the ruling of the Revenue Department, that he does not come within the class taxed,

> in the absence of circumstances sufficient to invoke the aid of a court of equity, his remedy for determining this controverted question of fact, which challenges only the administration of the law, is not by seeking to enjoin the collection of the tax, but by paying it under protest and then suing to recover it back,"

citing *Sherrod v. Dawson,* 154 N. C., 528.

In the more recent case of *Hunt v. Cooper,* 194 N. C., 265, it is said:

> "It is provided by statute that unless a tax or asessment, or some part thereof, be illegal or invalid or levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or part, and that if any person shall have a valid defense to the enforcement of a tax or assessment which is not illegal or unauthorized, he shall pay . . . such tax or assessment to the sheriff, and afterwards seek to recover it in accordance with the statutory method."

In the case of *Atlantic Coast Line v. Doughton,* 262 U. S., 413, a North Carolina case, the Supreme Court of the United States held, that in the absence of a decision by the State Court to that effect, that it could not say that the remedy of payment under protest is plain and adequate. Since the decision in that case there have been the following decisions by the Supreme Court of North Carolina recognizing injunctive relief:

> Railroad Co. v. Commissioners, 188 N. C., 265.
> Bond v. Tarboro, 193 N. C., 249.
> Hunt v. Cooper, 194 N. C., 265.
> Southern Railroad Co. v. Cherokee County, 195 N. C., 756.

The case of *Marion v. Pilot Mountain,* 170 N. C., 118, cited in the opinion in the Circuit Court of Appeals is, we respectfully submit, not in point because an examination of that

opinion discloses that the plaintiff failed to take any of the administrative steps to protect his rights and, in fact, acquiesced in what was done up to the point of payment of the amount assessed against his property.

It is, therefore, respectfully submitted that in a case such as the case at bar where an assessment for ad valorem taxation purposes is alleged to be unlawful and invalid, and the taxpayer has a cause of action arising under the Constitution of the United States, he is entitled to seek injunctive relief in a Federal Court of Equity.

The right to equitable relief has been recognized in North Carolina both before and since the enactment of Section 7979 of the Consolidated Statutes referred to in the opinion of the Court below and set forth elsewhere in this brief; the case of *Range Co. v. Carver,* 118 N. C., 328, being before the enactment of that statute and the case of *Purnell v. Page, supra,* and other cases cited, since the enactment. Furthermore, injunctive relief has been recognized in North Carolina by another statute where the tax assessment is illegal or invalid, C. S. 858, Appendix B.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the decisions of the lower Federal Courts may be reconciled, or the correct rule laid down by this Court, and proper construction placed upon Sec. 267 of the Judicial Code as it affects cases similar to the case at bar, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals in the Fourth Circuit and finally reverse it.

Respectfully submitted,

MURRAY ALLEN,
Counsel for Petitioner.

WILLIS SMITH,
W. T. JOYNER,
Of Counsel.

Appendix "A"

Section 7979 C. S.

"Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the non-payment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer. (Rev., s. 2855; 1901, c. 558, s. 30.)"

Appendix "B"

Section 858 C. S.

"No injunction may be granted by any court or judge to restrain the collection of any tax or any part thereof, or to restrain the sale of any property for the non-payment of any tax, unless such tax or the part thereof enjoined is levied or assessed for an illegal or unauthorized purpose, or the tax assessment is illegal or invalid."

FILE COPY

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 270

THE HENRIETTA MILLS, COMPLAINANT-APPELLANT,

versus

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, AND W. C. HARDIN, SHERIFF, APPELLEES.

REPLY BRIEF OF COMPLAINANT-APPELLANT

WILLIS SMITH,
Counsel for Appellant.

W. T. JOYNER,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 270

THE HENRIETTA MILLS, COMPLAINANT-APPELLANT,

versus

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, AND W. C. HARDIN, SHERIFF, APPELLEES.

REPLY BRIEF OF COMPLAINANT-APPELLANT

The complainant-appellant in this case elected to stand on its brief filed in support of its petition for writ of certiorari, the defendants-appellees having filed no brief in opposition thereto. The defendants-appellees having now filed a brief, the complainant-appellant files this reply brief. The appellant without restating its argument and the authorities in support thereof respectfully refers the Court to the brief heretofore filed in support of its petition for writ of certiorari.

In this reply brief appellant desires to call the Court's attention to inaccuracies apparently inadvertently made by the defendants-appellees in their brief filed in this cause, and to some features of the case referred to by defendants-appellees in their brief.

NO FINDINGS OF FACT BY EITHER DISTRICT OR CIRCUIT COURTS

The defendants-appellees contend in their brief that there were findings of fact made by the District and Circuit Courts which defendants say preclude the complainant-appellant from having relief in this action. The Court's attention is respectfully directed to the opinions of both the District and the Circuit Courts. By a reading of that part of the District Court's opinion shown in the record (p. 133) it is apparent that the District Court did not undertake to make any findings of fact because the Court expressed himself in the following language:

> "But in my view of this case it is not necessary to go into the merits of the matter, because I am compelled to hold that the complainant has no standing in this Court."

The Court immediately thereafter set forth his opinion that the complainant had an adequate remedy at law in the Courts of the State of North Carolina. *In this connection the District Court held that the complainant had pursued the methods marked out by State laws up to the point of testing its rights in the State Courts and said that the complainant could have gone into the State Courts and asked for a restraining order to stop the collection by the Sheriff of the tax alleged to be unlawfully levied.*

With respect to any finding of fact by the Circuit Court, the opinion of that Court is entirely clear that its opinion was based upon the theory that the complainant-appellant had an adequate remedy at law in either the State or Federal Courts and was precluded from going into a Court of Equity in the Federal Court by reason of Section 267 of the Judicial Code to the effect that:

"Suits in equity shall not be sustained in any Court of the United States in any case where a plain, adequate, and complete remedy may be had at law."

The complainant-appellant having heretofore, in its brief filed in support of its petition, set forth clearly the reasons why it had a right to go into a Federal Court of equity and having set up in that brief the proper construction of Section 267 of the Judicial Code, as discussed and explained fully by Mr. Chief Justice Taft in *Grether vs. Wright,* 75 Fed. 742, demonstrated clearly that the Circuit Court of Appeals made its decision on the basis of decision of the Supreme Court in *Pusey & Jones vs. Hansen,* 261 U. S. 491, the decision in which case is not applicable to the case at bar.

The defendants-appellees contend in their brief that this Court has no right to reverse the Circuit Court of Appeals because of findings of fact by the District Court and the Circuit Court. Under the practice in North Carolina this position is not tenable, because it has been expressly and repeatedly held that findings of fact by the Trial Judge are not binding on our appellate Court in injunction cases, but that the Court will itself look at the evidence presented before the Trial Court and determine whether or not plaintiff was entitled to the relief sought.

Saunders vs. Insurance Co., 183 N. C. 66.
Leaksville vs. Spray, 183 N. C. 511.

INJUNCTIVE RELIEF AGAINST UNLAWFUL ASSESSMENT RECOGNIZED IN NORTH CAROLINA

The appellees, on page 14 of their brief, cite *Mace vs. Commissioners,* 99 N. C. 65, and several other cases in support of their contention that injunctive relief should not be granted. A reading of those cases, however, discloses that the facts in each of them were far different from the facts in the case

at bar and in some cases based upon different statutes and dealing with a different class of taxation. Without citing further authorities herein the Court's attention is directed to page 14 et seq. of Appellant's brief filed in support of its petition for certiorari. Therein will be found cited the latest cases setting forth the holding of the Supreme Court of North Carolina to the effect that injunctive relief may be had against unlawful assessments and recognizing the principle that payment of tax under protest with right to sue to recover is not an adequate remedy at law against invasion of a tax payer's right by an illegal and unlawful assessment. The recent cases cited are so clear that it is unnecessary to hark back to old cases to find the authority in North Carolina on this point. Appendix B to the defendants'-appellees' brief in Sec. 464, Chap. 80, P. L. 1927, the biennial revenue act, and relates to income, franchise, license, and taxes other than property taxes, as are in dispute in this suit, and limits its provisions to taxes *"imposed in this act,"* and does not cover property taxes.

Furthermore, the Supreme Court of North Carolina has held repeatedly that when a complainant has made out a prima facie case for injunctive relief, or if the evidence leaves in doubt the question as to whether or not the complainant is entitled to such relief, a temporary injunction should be granted.

Marshall vs. Commissioners, 89 N. C. 103.
Harrison vs. Bray, 92 N. C. 489.
Faison vs. Hardy, 114 N. C. 58.

This rule is particularly to be enforced where the main relief to be finally sought is an injunction.

NO FAILURE OF COMPLAINANT TO APPEAR BEFORE COUNTY BOARD

The appellees attempt to bring up for consideration the fact that there was no appearance by the complainant before the County Board of Equalization when it met. Complainant considers it entirely unnecessary to discuss this point in detail because the District Judge in his opinion (R. p. 133) held that the complainant pursued the methods marked out by the State laws up to the point of going into Court. The reason that the complainant was not present at the alleged meeting of the Board of Equalization was because, as it contended, no such meeting was held on the dates provided for by law and whenever any meeting was held adjournment was had before the time expired for hearing complaints. Furthermore, under the law of North Carolina complainant filed its petition also before the State Board of Assessment, sometimes called the State Tax Commission, and that Board considered the matter, as it had a right to do, if complaint was filed "within ninety days after the final values are fixed and determined by the boards of commissioners of the county," and such complaint was filed in this case. (P. L. 1927, Art. II, Sec. 5, Sub-sec. 3. *Appendix A.*)

The complainant filed its complaint with the County Board on July 18, 1927 (R. p. 5) and filed another complaint on July 29, 1927 (R. p. 9), both of which were within the period of twenty days from the date that the County Commissioners held their alleged meeting. *Appendix A* contains that part of the statute authorizing complaint to be made to the State Board of Assessment and *Appendix B* contains that part of the statute allowing complaint to be filed with the County Board within twenty days after the equalization order is made.

It is in the record (p. 80) that one member of the Board of Assessors notified one of complainant's officers that the Board would meet with complainant's representatives on July 27,

1927, but on that morning when complainant was ready to present its complaint to the Board, the Board refused to hear it, whereupon appeal was taken to the State Board of Assessment. In this connection it might be pointed out that as late as August 25, 1927 no record had been made of any meeting held on July 11, as later was claimed to have been held by the County Board, although the records of the County Board at that time had been written up through meetings of August 3 (R. pp. 92 and 93). The meeting (record of which is set forth on pp. 34 to 38 of the Record) was apparently held at an irregular time and place and the minutes of which were written up after complainant's investigation on August 25, 1927.

ALLEGATIONS AND PROOF OF OVER-VALUATION

As to proof of over-valuation the defendants-appellees quote in their brief a portion of the District Court's opinion as to his failure to find that the taxing authorities of the defendant County had violated either the Fifth or Fourteenth Amendments to the Constitution of the United States. In the same opinion, however, the District Court also says: (R. p. 132.)

> "It will be noted in the complainant's bill that there is no allegation that the assessed value of its real estate is too high or in excess of its value, but it is higher in proportion to other real estate valued in the County."

This statement of the District Court is made directly in the face of the allegations in paragraphs five, (R. p. 3) twelve, (R. p. 9) and fourteen (R. p. 10) to the effect that the value of complainant's property was fixed in excess of its actual, true, fair, market, real and/or cash value on May 1, 1927. Paragraphs five and twelve set forth the allegation in figures and paragraph fourteen specifically alleges over-valuation.

It is quite evident from this that the District Court, doubtless on account of its great press of business, inadvertently made that statement without referring to the paragraphs in the complaint just referred to. The complainant's contention is that the District Court was of the opinion that there was an adequate remedy at law and did not attempt to go into the merits of the case or to make any findings one way or another, and the Court's statement as to the taxing authorities of the County not having violated either the fifth or fourteenth Amendment was based upon the Court's idea that the complainant had an adequate remedy at law.

As to proof of over-valuation, the Record, beginning with page 39 and running through page 91, is replete with conclusive testimony on that point. This evidence, most of which was by disinterested parties, shows clearly that the value of the Company's property, including personalty, was not in excess of $1,887,352 on May 1, 1927, the tax-listing date. The item of personal property valued at $513,584 is not in dispute, except insofar as complainant contends that it should be required to pay tax only on sixty per cent of that valuation, as will more fully hereinafter appear. The difference in dispute is the difference between a total valuation, after being partially reduced by the State Board, of $2,362,819 and the Company's contention of valuation of $1,887,352. This difference is the same as the difference between the Company's valuation of the real estate of $1,373,768 and the valuation of real estate by the State Board of $1,849,235. These figures, while not particularly pertinent in considering this appeal, are set up in statement form as APPENDIX C, to this brief.

The testimony of Thomas Nelson, who has been an appraiser for the State of North Carolina and other taxing units in the State, placed the valuation of the real estate at $1,347,154 against the Company's valuation of $1,373,768, thus showing that the Company was appraising its own property and setting up its value on its books considerably in excess

of the figure at which the appraiser (frequently used by the State and Counties) had valued the property. It must be borne in mind that these valuations were made by an examination of the property with an inventory before the appraisers, all of whom said that the property of complainant which was over-valued was in a rundown and out of repair condition and that the average age of the machinery was twenty years. On the other hand, the appraisals made by the defendants' witnesses, *all of whom were offcials of the County,* were made without a careful examination and inventory of the property. Fifty pages of record testimony speak in convincing manner to the effect that the complainant's property was grossly over-valued.

PROOF OF SIXTY PER CENT VALUATION GENERALLY

When we reach the question of discrimination between the assessment of complainant's property and property generally in Rutherford County, the record is filled with convincing testimony on this point, to which there has been no contradiction by the defendants-appellees, except in general terms. On Record (pp. 48-49) is a newspaper account published in Rutherford County carrying a financial statement of the County secured by the publisher of the paper from the County accountant before this litigation was thought of, which showed that the 1927 valuation was thirty-six million, but that the estimated actual valuation was sixty million. (R. p. 49). These same figures of an assessed valuation of thirty-six million but of an actual valuation of sixty million were set forth in a bond advertisement carrying a financial statement of the County prepared by Frank P. Stratford, County accountant, (R. pp. 52-53). Financial statements of the County to the same effect are found in the Record at pages 54, 55, 56, 77, 82, 83, 85 and 130, all of these financial statements being solemn declarations by the officials of

Rutherford County to the effect that property was assessed in Rutherford County at sixty per cent of its actual value. As the Record will show, a great many of these financial statements were embodied in the minutes of the Board of County Commissioners and typed into the records of the County as now shown, and this was done before there was any thought of litigation in this case. It is in the record (p. 56) that the County accountant, the chief financial officer of the County, wrote a letter approved by the County Attorney, Mr. N. C. Harris, whose name appears on the appellees' brief in this case, and said, among other things, the following:

> *"With reference to financial statement. You will note the assessed valuation is Thirty-six Million Dollars, whereas we have stated the estimated actual valuation Sixty Million Dollars. As I understand it, in North Carolina the assessed valuation is supposed to be One Hundred per cent, but we all know that it rarely is, and this estimated actual valuation is given you after consultation with persons who are in position to be fairly good judges. Frankly, our Commissioners are often too ready to please tax payers by listening to their arguments for low valuation."*

Not only do the solemn records of Rutherford County show that property was generally assessed at sixty per cent of its true value, but there are in the Record (pp. 89, 90 and 91) affidavits from citizens and business men of the defendant, Rutherford County, to the effect that property is generally assessed at sixty per cent of its true value.

When confronted with this evidence in the District Court, defendants attempted to explain it by saying that the tax exempt property in the County made up the difference between $36,000,000 and $60,000,000, referring to the large school houses and other public buildings in that County, but an examination of the financial statement of the County

(R. p. 55) and the evidence of witnesses (R. pp. 89, 90 and 91) show that the total value of tax exempt property did not exceed $3,530,000.

Against this conclusive proof of a general practice of assessing property at sixty per cent of its true value, the defendants-appellees were able to offer no evidence except statements containing generalizations made by County and tax officials of Rutherford County, and one weak affidavit signed by a few of the individual taxpayers, and even that affidavit does not deny that property is generally assessed at sixty per cent of its true value.

In addition to the above, there will be found in the Record (pp. 60 to 77) a list of transfers of land in Rutherford County showing the sale price and the 1927 assessed valuation, which speaks more convincingly than anything that could be said in affidavits to the effect that property in Rutherford County is assessed generally on a basis of even less than sixty per cent of the actual value. The defendants attempt to controvert the effect of that evidence by saying that the sale prices as specified in the deeds were boosted for trading purposes, but they do not place in the record a single instance of proof, and neither do they attempt to put into evidence anything to show that in those cases where no value is set forth in the deed, and which happened to be true in most cases, that the relation of the sale price to the assessed valuation was other than as was contended by complainant.

The strongest evidence that the defendants could offer in this case was a perferred stock circular published by other parties in 1921-22, in which the property of the complainant in North and South Carolina was placed at a figure considerably in excess of the assessed valuation but in this connection it must be borne in mind that the Company owned property in South Carolina about which the defendants did not trouble to inquire as to its valuation. Also it must be remembered that the preferred stock circular referred to was put out by people *who at that time owned control of the mill,*

and who were apparently more interested in selling stock than in operating the mill for its earning capacity, the same persons having sold their interests, (R. pp. 57-58) later to the present ownership of the mill at a figure that corresponds to the valuation placed on the property by the witness, Thomas Nelson, and the Company's appraisers.

The defendants also offered some evidence to the effect that some of the stock sold for $150 a share, whereas the majority sold for $100 a share, but the complainant showed that while it was true that a small amount of the stock did sell for $150, that stock was purchased by the present ownership of the mills in order to get rid of some minority stockholders who held sales contracts with the mills that were disadvantageous, and that this higher price paid for some of the stock was for the purpose of cancelling those contracts and not because the stock was worth the price paid therefor. (R. pp. 57-58). It is in evidence that no dividends have been paid on common stock since 1924, and none on preferred stock since 1926. (R. p. 57.) Then too, there has been several years depreciation and obsolescence since 1921-22.

CONCLUSION

The defendants-appellees attempt to defend their action by referring to the fact that the mill properties of the complainant-appellant have not been assessed on a higher basis than have other mill properties in Rutherford County. While denying that this is true, yet even if it were true, that would not constitute a justification for assessing complainant's property on a higher basis than property generally is assessed in Rutherford County, as there is no provision in the laws of the State of North Carolina allowing one class of property to be assessed at a higher proportionate valuation than other property in the County.

The complainant in this case contends that it has made out a prima facie case that entitles it to an interlocutory injunction pending a final hearing of the matter between the

parties, and that the District Court erred in refusing its application for an interlocutory injunction and erred in dismissing complainant's bill, and that the Circuit Court of Appeals erred in affirming the decision of the lower Court and thus denying to complainant the right to equitable relief in the Federal Courts, such relief in similar cases being available in the State Court. Complainant exhausted all administrative remedies and has paid that part of the tax which it is admitted is due.

Complainant respectfully submits that the Circuit Court of Appeals for the Fourth Circuit placed an improper construction on Section 267 of the Judicial Code and that the decision of that Court should be reversed to the end that complainant may have afforded to it equitable relief in the Federal Courts.

Respectfully submitted,

WILLIS SMITH,
Counsel for Complainant-Appellant.

W. T. JOYNER,
Of Counsel.

APPENDIX A

Chapter 71, Public Laws of North Carolina, 1927 Article II, Section 5, Sub-section 3:

To receive complaints as to property liable to taxation that has not been assessed or of property that has been fraudulently or improperly assessed through error or otherwise, and to investigate the same, and to take such proceedings and to make such orders as will correct the irregularity complained of, if found to exist. The said board shall constitute a State board of equalization of valuation and taxes. In case it shall be made to appear to the board that any tax list in any county in the State is grossly irregular, unlawfully or unequally assessed, it shall be the duty of the board to correct such irregularities, and to equalize the valuations of property, in a particular county, upon complaint to it of particular taxpayers, or upon its own initiation, under rules and regulations prescribed by it, not inconsistent with this act. *Provided that no appeal shall be considered or values fixed, be changed unless notice of same is filed within ninety days after the final values are fixed and determined by the boards of commissioners of the county.*

APPENDIX B

Chapter 71, Public Laws of North Carolina 1927, Section 109:

The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of overvaluation or undervaluation of any particular tract of real property, and after the general equalization order provided for in the preceding sections has been made, any person who owns property subject to taxation, and who finds that said property stands assessed for taxation, after such equalization order has been made, at an amount in excess of the actual value of such property on the first day of May, of the current year, may have the right to have the same reassessed and reappraised by the said board by filing with the clerk of the board of county commissioners *within twenty days* next after such equalization order has been made, an application in form and substance as follows:

(The form of application provided for was followed by complainant.)

APPENDIX C

The complainant's contention:

Personal property valuation as returned on tax list (not disputed)	$ 513,584.00
Real estate valuation as returned by Henrietta Mills on tax return	1,373,768.00
Total actual value of real and personal property as returned by Henrietta Mills	$1,887,352.00
Sixty per cent of actual valuation for tax purposes to conform to rule of valuation in Rutherford County	1,132,411.20

* * * * * * *

The defendants' contention:

Valuation of personal property accepted by County Board (not in dispute)	$ 513,584.00
Valuation of real property as assessed by County Board (in dispute)	2,124,235.00
Original valuation by County Board of real and personal property	$2,637,819.00
Reduced by State Board of Assessment	275,000.00
Valuation real and personal property as set up on tax books	$2,362,819.00

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 270

THE HENRIETTA MILLS, COMPLAINANT-APPELLANT,

versus

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, AND W. C. HARDIN, SHERIFF, DEFENDANTS-APPELLEES.

BRIEF OF DEFENDANTS-APPELLEES.

CLYDE R. HOEY,
Counsel for Defendants-Appellees.
FRED D. HAMRICK,
N. C. HARRIS,
J. S. DOCKERY,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 270

THE HENRIETTA MILLS, COMPLAINANT-APPELLANT,

versus

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, AND W. C. HARDIN, SHERIFF, DEFENDANTS-APPELLEES.

BRIEF ON BEHALF OF RUTHERFORD COUNTY AND W. C. HARDIN, DEFENDANTS-APPELLEES.

Statement of the Facts.

This controversy involves the assessment for taxation of the property of the Henrietta Mills, the complainant, for the year 1927, by the Board of Tax Assessors of Rutherford County, the Board of Equaliza-

tion and Review of Rutherford County, and the State Board of Assessment of North Carolina.

The Henrietta Mills is a corporation in Rutherford County and the property consists of cotton mills, located at Caroleen and Henrietta, together with the buildings, warehouses, storebuildings, machinery, tenement-houses and other property which comprises almost wholly the two mill villages.

Proceedings Before County Tax Board.

Under date of April 2, 1927, the Henrietta Mills filed its tax return and listed its real estate, machinery, buildings and tenement-houses at the sum of $1,373,768, and the assessment on this property was fixed by the Board of Assessors of Rutherford County at $2,124,235. The Henrietta Mills listed its personal property at $513,584.00 and this valuation was accepted by the County Board of Tax Assessors and remains unchanged. On July 2, 1927, the Henrietta Mills was notified of the valuation and assessment made by the Board of Tax Assessors of Rutherford County and on Monday, July 11, 1927, the Board of Supervisors and the Board of County Commissioners of Rutherford County convened as a Board of Equalization and Review at Rutherfordton, N. C., after giving notice as required by law, and remained in session until July 15, 1927, and heard complaints of all parties who desired to make objections to the assessment of their property and during these days heard and passed upon some seventy different complaints (R. p. 34). Al-

though the Henrietta Mills received notice on July 2, 1927, of the assessment made, no exception or objection was filed with the Board of Equalization and Review until after the time for filing complaints or exceptions had passed (R. pp. 100-106), said time being limited by statute to July 15, 1927 (P. L. 1927, ch. 71, Sec. 109) (N. C. Code 1927, Sec. 7971 (89)). On July 18, 1927, there was filed the paper, which appears in the pleadings, in which objection was made to the assessment.

Proceedings Before State Tax Commission.

On July 29, 1927, the Henrietta Mills appealed to the State Board of Assessment from the valuation placed upon said property by the Board of Assessors of Rutherford County. After due notice the State Board of Assessment heard said matter in the city of Raleigh, N. C., on October 19, 1927, and it was agreed before said State Board of Assessment that there was no controversy as to valuation placed upon the personal property, the same having been listed for taxation and accepted at $513,584.00, and that the only controversy between the parties was over the value of the real estate, which included machinery, buildings, tenement-houses, etc. (See Sec. 11 of Stipulation, R., p. 138.) After the offering of evidence, both written and oral, the argument of counsel and full consideration of the matter (R., p. 134), the State Board of Assessment finally rendered judgment reducing the assessment on said real estate, machinery, buildings, tenement-houses from $2,124,235.00 to $1,849,235.00, making a reduction

of $275,000.00 from the assessment thereon made by the Board of Assessors of Rutherford County. This was certified to the proper tax officials of Rutherford County and said real estate, machinery, buildings and tenement-houses of the Henrietta Mills was placed on the tax books of Rutherford County at said value and taxes levied upon said assessment, as provided by law.

In the bill of complaint and in the Brief of the complainant, the complainant has confused the valuation of real estate of the Henrietta Mills with the valuation of personal property. On the original tax return of the Henrietta Mills the complainant (R., p. 96) listed its personal property for taxation at a valuation of $513,584.00, which valuation was accepted by the taxing authorities of Rutherford County; and by reference to stipulation, shown on page 138 of the record, it will be seen that the parties agreed that the valuation of the personal property was not in controversy and that the only matter in dispute between the parties is as to the valuation of the real estate, machinery, buildings and tenement-houses of the complainant.

In the original tax return filed by the Henrietta Mills for the purposes of taxation, which tax return was made out by an officer of the company without consultation with any of the taxing authorities of the county, the complainant listed said real estate, machinery, buildings and tenement-houses at a valuation of $1,373,768.00 and the personal property, as aforesaid, at a valuation of $513,584.00.

To show the inconsistency of the complainant, it now contends that the combined value of its real and per-

sonal property for taxing purposes should be placed, not at the sum of $1,877,352.00 (the amount at which they voluntarily listed said property for taxation), but at a combined valuation of $1,132,411.20.

The real property which complainant listed on its tax return for the year 1927 at a valuation of $1,373,-768.00 had been assessed for taxation for a number of years previous to 1927 at a valuation which was more than $800,000.00 in excess of the amount at which complainant listed said property for taxation for the year 1927.

The complainant has brought this action and alleges that its property is excessively valued and that it is higher proportionately than other property in Rutherford County and that it is discriminated against in the matter of the assessment and seeks to have this Court enjoin the collection of the taxes levied against it. The complainant offers, in support of its contention, affidavits setting forth that its machinery is old and has been used for some time and that, in the opinion of the makers of the affidavits, the property does not possess the cash value to justify the assessment which has been levied. Other affidavits have been offered tending to show that conveyances of real estate in Rutherford County during the year 1927 revealed that a large number of sales of property have been made at a recited consideration greater than the said property was assessed for taxes. The complainant further offers affidavits with reference to the sale by W. S. Forbes in October, 1926, of stock in the Henrietta Mills at less

than $100.00 per share. The complainant further alleges that other real estate in Rutherford County is assessed at about 60 per cent of its value and claims that its property is assessed at 100 per cent of its value and alleges that the assessment was arbitrarily made and that it involves discrimination against it and, therefore, seeks injunctive relief under the provisions of the Federal Constitution.

The defendants show by their testimony that this identical property was assessed by experts representing the State of North Carolina in the year 1920, when all real estate, as well as mill property, was reassessed, and that at said date the experts in appraising mill property assessed the physical property of the Henrietta Mills at $2,400,000.00 (R., p. 109), which property is now only assessed for taxation in Rutherford County, after the reduction granted by the State Board of Assessment, at $1,849,235.00 (R., p. 129), even though since 1920 there have been large additions and improvements made to the property of the Henrietta Mills. That for the year 1920 the Henrietta Mills property was placed on the tax books of Ruthford County, in accordance with the assessment made by the State Tax Commission, to wit, at the sum of $2,400,000.00 for the lands, buildings, machinery and tenement-houses and taxes were paid by the complainant at this rate without objection.

In 1921 the Board of Commissioners of Rutherford County made a 10 per cent reduction in the assessment of all property in the county (R., p. 101), and this ap-

plied to the complainant and said property was correspondingly reduced 10 per cent. The complainant's property for 1923 was valued at $2,160,000.00; for 1924 at $2,180,880.00; for 1925 at $2,180,800.00; for 1926 at $2,180,800.00 (R., p. 109). The above represents the assessments of those years upon the real estate, machinery, buildings, and tenement-houses of the Henrietta Mills and there was no objection to said assessments for any of those years, notwithstanding the fact at the time these assessments were made the parties who then owned the controlling stock in, and were officers of, the Henrietta Mills were residents of Rutherford County and were familiar with tax values generally in the county, and there was no complaint of either over-assessment or discrimination (R., p. 109). The same property is now, for the year 1927, assessed at only $1,849,235.00, which is $351,565.00 less than the assessment for the preceding year of 1926.

The defendants show by affidavits that there has been no discrimination against the complainant in the assessment of its property; that, as compared with the other cotton mills in Rutherford County, its property is assessed lower proportionately, and that all of said property in Rutherford County has been assessed in the honest, conscientious judgment of the assessors at its real true cash value. By way of comparison, affidavits disclose that the Henrietta Mills have the lowest assessment per spindle of any similar mills in Rutherford County, its assessment being only $24.62 per spin-

dle, whereas the Spencer Mills is $28.03 per spindle; the Florence Mills, $33.63 per spindle; the Cliffside Mills, $33.48 per spindle, and the Alexander Mills, $50.06 per spindle. (See affidavits, R., pp. 97-128, inclusive.)

The defendants show by affidavit of W. G. Harris (R., pp. 97-100), accompanied by the prospectus of the Henrietta Mills issued by Independence Trust Company, Charlotte, N. C., for a bond sale of said mills as of January 1, 1922, that this corporation at that time represented that its three mills, consisting of Henrietta Mills No. 1, at Henrietta, and Henrietta Mills No. 2, at Caroleen, and the property of Cherokee Falls Manufacturing Company, at Cherokee Falls, S. C., had all been assessed for taxation at the sum of $3,405,409.00. This also shows that the complainant was carrying fire insurance on said properties at that time totaling $5,627,240.00. This prospectus further asserts that on a valuation of $30.00 per spindle, which it maintains would be far below replacement value and regarded as a most conservative estimate by mill people, that these three mills would be worth $3,090,600.00. This prospectus further asserts that the physical properties of all these mills are in the best of condition and that practically all of the early machinery has been replaced during the last five or six years with thoroughly modern equipment. An examination of this prospectus, which appears on pages 97 to 100 of the record, will disclose that the two mills located in Rutherford County represent the bulk of the value of these plants

and the details covering the physical equipment of said mills is set forth on page 99 of the record.

The defendants show, by affidavits, that the assessments have been fairly and honestly made on all property in Rutherford County and that it is untrue that the property generally has been assessed at 60 per cent of its value or that there was any understanding, agreement or purpose to assess the property at less than its true cash value (R., pp. 120-125). They also explain by affidavit the fact that the recited consideration in various deeds recorded for property sold during the year 1927 frequently includes a consideration greater than paid, and in a large number of instances cited the property was sold on long time and would not bring anything like that sum for cash (R., p. 111), and it is further shown by affidavit that a large part of the farm land of Rutherford County is now assessed on the tax books for as much as or more than it would bring at a cash sale, and some of it has been sold for less than it is assessed for taxes (R., pp. 127-8). The complainant offers 93 instances for 1927 when there were 1,914 different conveyances of property during that period. Affidavits are also offered sustaining the valuation placed on the Henrietta Mills property by establishing that the real value of said property is greater than the assessed value and showing that the stock of the Tanner estate and other holders of stock sold their stock in the Henrietta Mills at $150.00 per share at the very time that the complainant alleges that the stock was selling for less than $100.00 per share (R., pp. 114-115).

ARGUMENT.

The Constitution of North Carolina, Article V, Sec. 3, provides that laws shall be passed taxing by uniform rule all real and personal property according to its true value in money. Article VII, Section 9, provides that all taxes levied by any county, city or town shall be uniform and *ad valorem* upon all property in the same, except property exempted. The Legislature of North Carolina passed an Act in 1927 known as the "Machinery Act", being Chapter 71 of Public Laws of 1927, and being incorporated in North Carolina Code of 1927 as Section 7971, and said Act provides for a Board of Equalization and Review composed of the County Commissioners (7971 (88)), and also provides for a State Board of Assessment, composed of the Commissioner of Revenue, Attorney General and Chairman of the Corporation Commission. It is the intention of this Act (Sec. 7971 (46)) to have all property, real and personal, assessed at its true and actual value in money. The township list-takers and assessors make the assessments of all property in their respective townships and make returns on the abstract sheets as provided for under their oaths that they will assess every tract or parcel of land, or other real or personal property, at its true value in money and will endeavor to do equal justice to the public and to the taxpayers concerned (7971 (44)).

It is further provided in the Act that one who objects to the valuation placed on his property shall have the right, under proper notice, to have the valuation

as placed on his property reviewed by the Board of Equalization and Review, composed of the County Commissioners, and if dissatisfied with their decision, an appeal may be taken to the State Board of Assessment.

If the taxpayer is not satisfied with the decision of the State Board of Assessment, he may then pay his taxes under protest and sue to recover them back (N. C. Code, 1927, Sec. 7979, Appendix A).

The Legislature of North Carolina from time to time has passed laws relative to the raising of revenues commonly known as "Revenue Acts" and "Machinery Acts". It appears that the Legislature in the enactment of the various laws on this subject has not favored the extraordinary remedy of injunction to hinder the collection of revenues. The Legislature of 1927 enacted what is known as the Revenue Act of 1927, being Chapter 80 of the Public Laws of 1927 (N. C. Code, 1927, Sec. 7880, sub-sections 1 to 191). This Act relates to the collection of inheritance taxes, privilege taxes, etc., which are to be collected by the State of North Carolina, and Sec. 7880, sub-section 189 (Appendix B), provides that no court of the State shall entertain a suit for the purpose of preventing the collection of any tax under this Act and provides for the payment under protest with the right of suit for recovery. This section has been construed in Ragan *vs.* Doughton, 192 N. C. 500.

The Machinery Act of 1927 (Chapter 71, P. L. 1927, Section 7971, subsections 1 to 92, N. C. Code, 1927) relating to the collection of property taxes, provides for

the creation of various boards for the assessment, levy and collection of taxes by the political subdivisions of the State, such as counties, town, etc.

Section 7979, N. C. Code, 1927 (Appendix A), was enacted as a part of the Machinery Act of 1901, being Chapter 558, Sec. 30, of Public Laws of 1901. This section was codified in the Consolidated Statutes of 1919 as Section 7979 and has been in force since its enactment. This section was intended by the Legislature to afford to one who resists the payment of a tax a legal remedy and to restrict him to that remedy unless the case comes within the exceptions named in the Act. Furthermore, Section 858 of Consolidated Statutes of North Carolina provides that

> "No injunction may be granted by any court or judge to restrain the collection of any tax or any part thereof, or to restrain the sale of any property for the nonpayment of any tax, unless such tax or the part thereof enjoined is levied or assessed for an illegal or unauthorized purpose, or the tax assessment is illegal or invalid."

The primary object of the foregoing sections is to prevent, as far as possible, any unnecessary delay in the collection of revenues. Among some of the cases which have been construed by the Supreme Court of North Carolina which come under these sections are the following:

Mace *vs.* Commissioners, 99 N. C. 65;
McDonald *vs.* Teague, 119 N. C. 604;
Wilson *vs.* Green, 135 N. C. 343;
Teeter *vs.* Wallace, 138 N. C. 264.

In Teeter *vs.* Wallace, *supra*, in construing Chapter 558, Sec. 30, Public Laws of 1901 (now Sec. 7979, N. C. Code, 1927), the court says (at page 267):

> "This is a plain and adequate remedy and the provisions of the statutes have been construed by this Court to be mandatory and the statutory remedy to be exclusive, so far at least as the recovery of the tax, which has been paid, is concerned."

In Wilson *vs.* Green, *supra*, the Court says (at p. 348):

> "It would seem that these provisions of the law are comprehensive enough to afford ample protection to the taxpayer against any excessive valuation, discrimination or abuse of power by the taxing officers. A thorough and complete system of procedure is established by virtue of which the taxpayer may be heard upon all questions concerning the valuation of his property for taxation and be restored to any and all rights he may have lost by any irregular or fraudulent action of the assessors. * * * It is important that the true extent and scope of the powers of these revising tribunals should be clearly understood and stated because if they are possessed of the authority which, as we think, was intended to be conferred upon them, the plaintiffs have failed to avail themselves of the complete and adequate remedy which is thus afforded by the statute for the redress of their alleged grievances. The remedy is not only certain but is simple, speedy and efficacious, and by every rule of procedure and practice it must be pursued and exhausted before the complain-

ants can have recourse to the courts for equitable relief, and certainly before the court will extend its aid in preventing or retarding the collection of the public revenues."

In the decision of Mace *vs.* Commissioners, 99 N. C. 65, the court, at page 67, says:

"It is alleged in the complaint in general terms that the taxes, the collection of which is sought to be restrained, were 'levied for an illegal or unauthorized purpose'; but this is wholly insufficient. The constituent facts necessary to complete and show the alleged 'illegal or unauthorized purpose', must be alleged in the pleading, so that the Court can see from it what the purpose is and determine its character. The facts being alleged; it is the province of the Court to determine whether or not the purpose is 'illegal or unauthorized'.

"The learned counsel for the appellant contended on the argument that it appears from the pleadings that the tax levy was in excess of the limitations prescribed by the Constitution, and that the exceptive words, 'except such tax or the part thereof enjoined be levied or assessed for an illegal or unauthorized purpose', of the statute above cited, are broad enough to embrace, and do embrace, all taxes levied in excess of the constitutional limitation, or in any way illegally levied. This interpretation cannot be allowed. It would practically render the statute nugatory. It is seldom that the collection of taxes is resisted upon grounds other than that the levy of the same was in some way illegal. The exceptive words apply not to the levy or illegal levy of the taxes, but to the 'il-

legal or unauthorized' purpose of the levy. The collection of taxes shall not be interfered with, by injunction, unless the purpose of the same be 'illegal or unauthorized.' "

The foregoing cases, among many others to the same effect, have not been overruled by the Supreme Court of North Carolina, and therefore the complainant's contention that the adequacy of the remedy at law is doubtful, under authority of A. C. L. Ry. *vs.* Doughton, 262 U. S. 413 (at 226), is not well taken, for there is no absence of a decision on the statutes in the case at bar.

The injunction prayed in the Federal court was properly refused, since the complainant has an adequate remedy at law in the State courts by paying the tax alleged to be illegally exacted under protest and suing to recover it back.

Keokuk Bridge Co. *vs.* Salm, 258 U. S. 122, 66 L. ed. 496;

Dalton Adding Machine Co. *vs.* State Corp. Com., 236 U. S. 699, 59 L. ed. 797;

Singer Sewing Machine Co. *vs.* Benedict, 229 U. S. 481;

Boise Artesian Water Co. *vs.* Boise City, 213 U. S., 276;

Indiana Mfg. Co. *vs.* Koehne, 188 U. S. 681, 47 L. ed. 651;

Shelton *vs.* Platt, 139 U. S., 591;

Whitehead *vs.* Shattuck, 138 U. S. 146;

State R. Tax Cases, 92 U. S. 575;

Schaul *vs.* Charlotte, 118 N. C. 733;

Railroad *vs.* Lewis, 99 N. C. 62;
Express Co. *vs.* Charlotte, 186 N. C. 668;
Railroad *vs.* Cherokee County, 177 N. C. 86;
Brunswicke-Balke Co. *vs.* Mecklenburg County, 181 N. C. 386;
Blackwell *vs.* Gastonia, 181 N. C. 378.

The bill of complaint does not set out any special circumstances bringing the case within some recognized head of equity jurisdiction cognizable by the Federal court, such as the avoidance of a multiplicity of suits, prevention of irreparable injury, removal of cloud on title, fraud and collusion by the taxing authorities, or that the payment of the taxes would jeopardize its business. Some such allegations are necessary and must be supported by evidence, as will appear from the cases cited *supra.* Among many other cases to this effect are:

Indiana Mfg. Co. *vs.* Koehne, 188 U. S. 681;
Shelton *vs.* Platt, 139 U. S. 591;
Raymond *vs.* Chicago, etc., Co., 207 U. S. 20;
Johnson *vs.* Wells-Fargo & Co., 239 U. S. 234;
Ogden City *vs.* Armstrong, 168 U. S. 224.

See also:
37 Cyc. 1258;
26 R. C. L., paragraph 416, pp. 461-462.

The validity of the law under which the assessment was made is not questioned by the complainant, as it was in Ogden City *vs.* Armstrong, 168 U. S. 224, *supra,* and the manner or method of assessment is not chal-

lenged by the complainant, as it was in Johnson *vs.* Wells-Fargo & Co., 239 U. S. 234; Raymond *vs.* Chicago, etc., Co., 207 U. S. 20, and like cases.

The allegations of the bill of complaint as to the alleged illegal discrimination being denied by the answer, which is supported by substantial evidence, at most only raises an issue of fact. The District Court found as a fact that there was no unlawful or unjust discrimination against the complainant in the assessment of its real property or that the taxing authorities had violated either the Fifth or Fourteenth Amendments to the Federal Constitution, and this opinion was concurred in by the Circuit Court.

The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by the Supreme Court of the United States unless shown to be clearly erroneous.

American Bank & Trust Co. *vs.* Federal Reserve Board, 262 U. S. 643;

Brewer-Elliott Oil & Gas Co. *vs.* U. S., 260 U. S. 77;

Bodkin *vs.* Edwards, 255 U. S. 221;

Baker *vs.* Schofield, 243 U. S. 114;

L. E. Waterman *vs.* Modern Pen Co., 235 U. S. 88;

Lukenbach *vs.* W. J. McCahan Sugar R. Co., 248 U. S. 139.

This rule applies also where the evidence is taken before an examiner.

Causey *vs.* United States, 240 U. S. 399;

Gilson *vs.* United States, 234 U. S. 380.

The findings of fact by the State Board of Assessment, by analogy, should be given as much weight as the findings of an examiner. See—

Pittsburgh, C., C. & St. L. Ry. Co. *vs.* Backus, 154 U. S., 421.

The Federal courts are reluctant to interfere with the fiscal operations of the States, and unless it appears that bad faith, fraud or collusion is practiced by the authorities in the administration of their duties, equitable relief cannot be invoked. Errors of judgment or mistakes on the part of the administrative officers is not sufficient. There must be clear and convincing proof of intentional and systematic discrimination.

Southern Railway Co. *vs.* Watts, 260 U. S. 519;
Sunday Lake & I. Co. *vs.* Township of Wakefield, 247 U. S. 350;
C., B. & Q. Ry. Co. *vs.* Babcock, 204 U. S. 585;
People *ex rel.* Brooklyn R. R. Co. *vs.* State Tax Co., 199 U. S. 48;
Pittsburgh, C., C. & St. L. Ry. Co. *vs.* Backus, 154 U. S. 421;
Chicago, etc., Ry. Co. *vs.* Kendall, 266 U. S. 94;
Fordson Coal Co. *vs.* Moore, 31 F. (2nd) 606.

The jurisdictional allegation in complainant's bill of the inadequacy of the remedy at law is a mere inference or conclusion which must be made out by facts averred or proven (Shelton *vs.* Platt, 139 U. S. 591). Furthermore, the allegations of excessive valuation

and discrimination and that such alleged discrimination and over-valuation contravenes the Federal Constitution raises only an issue of fact, the establishment of which the complainant has failed in its proof.

The "due-process clause" of the Federal Constitution has not been violated by the defendants, as the North Carolina statutes provide for a notice and a hearing before the Board of Equalization and Review and for a hearing before the State Board or Assessment before the values become irrevocably fixed, and this is all that is necessary.

Hagar *vs.* Reclamation District, 111 U. S. 701, 28 L. ed. 569;

Londoner *vs.* City and County of Denver, 210 U. S. 373, 52 L. ed. 1103.

In the Londoner case, *supra,* the court, at page 385, says:

> "In the assessment, apportionment and collection of taxes upon property within their jurisdiction, the Constitution of the United States imposes few restrictions upon the states. In the enforcement of such restrictions as the Constitution does impose, this court has regarded substance, and not form. But where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to

> be heard of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

The complainant failed to appear before the Board of Equalization and Review within the time provided by statute, but availed itself of a hearing before the State Board of Assessment, and obtained substantial relief, which hearing is sufficient under the due-process clause. Furthermore, the statutes also provide for a further test of the propriety of the valuation in the State court by paying the tax under protest and suing to recover it back. This alone would have supplied due process.

> Hettrick *vs.* Lindsay, 265 U. S. 384; 68 L. ed. 1065.

Nor was there, on the merits, any violation of the "equal-protection clause". The findings of the District Court with reference to the assessed value of the complainant's property as compared with its value during the period since 1920 and as compared with the values in 1927 of other mills in the same county, supported by the refusal of the three judges to interfere, substantiates its conclusion that there was no discrimination in fact. The opinion of Judge Webb (R., p. 133) reads, in part, as follows:

> "I can find nowhere in my careful persual of the pleadings and the affidavits anything that shows that the action of the taxing authorities of Rutherford County, North Carolina, has violated either the Fifth or the Fourteenth Amend-

ments. But in addition to this and stronger I do find that the complainant in this matter had in the State of North Carolina an adequate remedy at law for the redress of its alleged wrongs. The laws of North Carolina give ample machinery * * * in the State Courts for just such discriminations as are alleged by the complainant. The complainant pursued the methods marked out by the State laws challenged in this case, but rather than to go further and test its rights in the State Courts it has come to this Federal Tribunal * * *. This Board (State Board of Assessment), composed of distinguished and high-minded men well versed and learned in the proper assessment of property in North Carolina, gave to the complainant a full, fair and open hearing, at which hearing both sides were represented by able counsel, and after carefully going into the matter the State Board reduced the assessed value of the complainant's property from $2,124,235.00 to that of $1,849,235.00. It appears that this amount is the smallest upon which the complainant has been called upon to pay taxes for the past six or seven years."

"The complainant certainly had its day in court and *and* if dissatisfied with the action of the State Board then the State laws plainly mark out the remedy which it had for the redress of its grievances."

In further support of the defendants' contention that the equal-protection clause of the Constitution has not been violated, See—

Chicago Great-Western Ry. Co. *vs.* Kendall, 266 U. S. 90, 69 L. ed. 183;

Southern Ry. *vs.* Watts, 260 U. S. 579; 67 L. ed. 375;

Baker *vs.* Dreusedow, 263 U. S. 137, 68 L. ed. 212.

The complainant in its briefs filed in the District Court and in the Circuit Court devotes considerable attention to the proposition that it would be subject to a multiplicity of suits due to the quadrennial assessment under the State laws and apparently relies on this as one of the grounds for equitable relief. There is no allegation in the bill of complaint raising an issue on this point and the complainant, being required to show more than a mere possibility of repeated litigation, and that the danger to which it is exposed is a real one, should be required to set out those facts clearly in its bill and to support the allegation by evidence.

This question is not raised in the petition for writ of certiorari, and, on authority of the decisions, this Court limits its review to errors assigned in the petition.

Alice State Bank *vs.* Houston Pasture Co., 247 U. S. 240;

Montana Mining Co. *vs.* St. Louis, 186 U. S. 31;

Hubbard *vs.* Todd, 171 U. S. 474.

Furthermore, a decision at the beginning of the quadrennial assessment period would be *res judicata* during the next three years.

Freeman, Judgments (5th ed. 1925), Vol. 2, Secs. 851-852;

City Council of Augusta, Ga., *vs.* Timmerman, 233 Fed. 216;
Express Co. *vs.* Seibert, 44 Fed. 310;
Boise Artesian Water Co. *vs.* Boise City, 213 U. S. 276.

Conclusion.

It may be conceded that in exceptional cases one resisting the payment of a tax alleged to be illegally exacted by a State or political subdivision thereof may invoke relief on the equity side of the Federal courts. But for cogent reasons of public policy, derived from the necessity of uninterrupted revenues, equitable relief is limited or denied unless the case comes within one of the recognized heads of equity jurisdiction. In this respect the complainant has failed except by mere jurisdictional allegations, inferences or conclusions which it has failed to prove.

The complainant challenges the construction of Section 267 of the Judicial Code as applied by the lower courts. It cannot be assumed that a decision of this Court would settle for all time the application of Section 267 of the Judicial Code to cases arising in the various jurisdictions, for the rule will have to be applied to each case as it arises. The facts are seldom similar and the application of the rule largely depends on the State statutes and their construction by the State supreme courts. But the appellees respectfully submit that this case, considered in the light of the pertinent statutes and the State decisions, should be

dismissed, as the complainant has a plain, complete and adequate remedy at law.

Moreover there has been no violation of the "due-process" clause or the "equal-protection" clause of the Federal Constitution by the appellees in the valuation and assessment of the complainant's property. The local Board of Assessors is the same board that assessed all other property of persons similarly situated in the same township of the property of the complainant and the Board of Equalization and Review is the same board that reviews the assessment of all property of Rutherford County and the State Board of Assessment is the same board that reviews and equalizes the assessments of all property in the State of North Carolina. The complainant failed to appear before the County Board of Equalization and Review within the time prescribed by statute, but pursued its remedy and availed itself of a hearing before the State Board of Assessment and obtained relief by having the valuation placed on its property by the local board reduced in the amount of $275,000.00. This alone is sufficient to controvert the charge that the complainant did not have a fair and open hearing, and that is all that is necessary.

Furthermore, the judgment of the lower courts should be affirmed by this Court dismissing the bill of the complainant on the merits. It has failed to make good its allegations and the District Court found as a fact that there was no unlawful discrimination against the complainant in the valuation of its property and

no violation of the Federal Constitution and this judgment was concurred in by the Circuit Court.

Briefly, the judgment dismissing the bill should be affirmed for that:

1. The complainant has a plain, adequate and complete remedy at law;

2. There has been no violation of the Fifth Amendment to the Constitution of the United States;

3. There has been no violation of the Fourteenth Amendment to the Constitution of the United States;

4. Upon the merits, the complainant is not entitled to the relief prayed.

Respectfully submitted,

CLYDE R. HOEY,

Counsel for Defendants-Appellees.

FRED D. HAMRICK,
N. C. HARRIS,
J. S. DOCKERY,

Of Counsel.

APPENDIX A.

7979. Remedy of taxpayer for unauthorized tax.—Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer (Rev., s. 2855; 1901, c. 558, s. 30).

APPENDIX B.

7880(189). Taxes to be paid.—No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this act. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property such person shall pay such tax to the proper officer, and notify such officer in writing that he pays same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises and he may, at any time within thirty days after such payment, demand the same in writing from the Commissioner of Revenue of the State if a State tax or if a county, city or town tax, from the treasurer thereof, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such official for the amount so demanded; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of State taxes for which judgment shall be rendered in such action shall be refunded by the State (1927, c. 80, s. 464).

SUPREME COURT OF THE UNITED STATES.

No. 270.—October Term, 1929.

The Henrietta Mills, Petitioner, *vs.* Rutherford County, in the State of North Carolina, and W. C. Hardin, Sheriff. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[April 14, 1930.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Henrietta Mills, a corporation of North Carolina, brought this suit in the District Court of the United States to enjoin Rutherford County, in that State, from collecting a tax upon the property of the corporation for the year 1927, or for any subsequent year, based upon any valuation in excess of sixty per cent. of the actual and fair market value. It was alleged that the enforcement of such a tax would deprive the corporation of its property without due process of law and deny the equal protection of the laws in violation of the Fourteenth Amendment of the Federal Constitution.

The bill of complaint charged that the actual value, in the sense of the applicable statutory provision of the State, of the property of the corporation in Rutherford County on May 1, 1927, did not exceed $1,887,352, but that the property was actually assessed at $2,637,819. The corporation complained to the County Commissioners, as the constituted Board of Equalization and Review, but the board declined to pass upon the questions presented. The corporation then appealed to the State Board of Assessment which, after hearing, reduced the assessment by the sum of $275,000 and fixed the value of the property at $2,362,819. The bill alleged that the tax officials of the county, and of the State, had intentionally and arbitrarily valued the complainant's property greatly in excess of its true value, while at the same time they had fixed the value of all other assessable property within the county at only sixty per cent. of its true value; that the assessment of complain-

ant's property should have been reduced in like proportion, that is, to $1,132,411.20; and that the complainant had paid to the county a sum which would be equal to the tax if laid upon such a valuation.

The answer denied that there had been any arbitrary and intentional overvaluation, or any unlawful discrimination against the complainant, and alleged that the complainant had an adequate remedy at law.

The District Court decided against the complainant upon both these grounds and dismissed the bill of complaint. The decree was affirmed by the Circuit Court of Appeals. 32 F. (2d) 570.

Section 16 of the Judiciary Act of 1789 (1 Stat. 82) provided "That suits in equity shall not be sustained in either of the courts of the United States, in any case where a plain, adequate and complete remedy may be had at law". This explicit prohibition, continued in section 723 of the Revised Statutes and section 267 of the Judicial Code (U. S. C., Tit. 28, sec. 384), has clear application to proceedings to enjoin the collection of taxes upon the ground that they are illegal or unconstitutional. It must appear that the enforcement of the tax would cause irreparable injury, or that there are other special circumstances bringing the case under some recognized head of equity jurisdiction, before the aid of a Federal court of equity can be invoked. The mere fact that the validity of the tax may be tested more conveniently by a bill in equity than by an action at law does not justify resort to the former.[1]

In the present case, a distinction is sought to be taken upon the ground that a statute of North Carolina gives a right to proceed in equity, and it is argued that a similar right should be recognized by the Federal court. Section 7979 of the Consolidated Statutes of North Carolina provides:

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[1]Dows *v.* City of Chicago, 11 Wall. 108, 112; Union Pacific Railway Company *v.* Cheyenne, 113 U. S. 516, 525; Shelton *v.* Platt, 139 U. S. 591, 594; Pittsburgh, etc., Railway *v.* Board of Public Works, 172 U. S. 32, 37; Arkansas Building and Loan Association *v.* Madden, 175 U. S. 269, 274; Cruickshank *v.* Bidwell, 176 U. S. 73, 80, 81; Indiana Manufacturing Company *v.* Koehne, 188 U. S. 681, 684; Boise Artesian Water Company *v.* Boise City, 213 U. S. 276, 281, 282; Singer Sewing Machine Company *v.* Benedict, 229 U. S. 481, 485; Dalton Adding Machine Company *v.* State Corporation Commission, 236 U. S. 699, 701; Union Pacific Railroad Company *v.* Weld County, 247 U. S. 282, 285; Keokuk Bridge Company *v.* Salm, 258 U. S. 122, 125; Risty *v.* Chicago, R. I. & P. Railway Company, 270 U. S. 378, 388.

"Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the non payment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer." (Laws of 1901, c. 558, § 30.)

The Supreme Court of North Carolina, in *Norfolk-Southern Railroad Company* v. *Board of Commissioners,* 188 N. C. 265, 266, made the following statement as to the procedure in the state courts:

"In this jurisdiction, a taxpayer may contest the validity of an assessment or collection of tax upon his property in one of two ways:

"(1) He may pay the alleged illegal or invalid tax under protest and then bring an action to recover it back, observing, of course, the requirements of the statute with respect to time, notice, etc. C. S. 7979. *Murdock* v. *Comrs.,* 138 N. C. 124; *Hilliard* v. *Asheville,* 118 N. C. 845; *Schaul* v. *Charlotte,* 118 N. C. 733; *Range Co.* v. *Carver,* 118 N. C. 328.

"(2) He may, if the tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, apply for injunctive relief without paying the alleged

illegal or invalid tax in advance. C. S. 858;[2] *Sherrod* v. *Dawson*, 154 N. C. 525; *Lumber Co.* v. *Smith*, 146 N. C. 199; *Purnell* v. *Page*, 133 N. C. 129".[3]

If it be assumed that, under the state statutes, the complainant could have applied to the state court for an injunction, the complainant also had an adequate remedy at law. *Schaul* v. *Charlotte*, 118 N. C. 733; *Teeter* v. *Wallace*, 138 N. C. 264, 267; *Blackwell* v. *City of Gastonia*, 181 N. C. 378; *Brunswick-Balke-Collender Company* v. *Mecklenburg County*, 181 N. C. 386; *Carstarphen* v. *Plymouth*, 186 N. C. 90. This is not a matter of doubt, as in *Union Pacific Railroad Company* v. *Weld County*, 247 U. S. 282, 285, and *Atlantic Coast Line Railroad Company* v. *Doughton*, 262 U. S. 413, 426. The act of Congress with respect to the existence of such a remedy has reference to the adequacy of the remedy on the law side of the Federal courts (*Smyth* v. *Ames*, 169 U. S. 466, 516; *Chicago, B. & Q. Railroad Company* v. *Osborne*, 265 U. S. 14, 16; *Risty* v. *Chicago, R. I. & P. Railway Company*, 270 U. S. 378, 388) and in this case there would have been an adequate remedy at law, not only in the state court, but also in the Federal court if petitioner had been able to show a violation of the Federal Constitution (Judicial Code, sec. 24).

The contention is that the state statute authorizing a proceeding in the state court for an injunction created an equitable right which should be enforced in the Federal court. It is true that where a state statute creates a new equitable right of a substantive character, which can be enforced by proceedings in conformity with the pleadings and practice appropriate to a court of equity, such enforcement may be had in a Federal court provided a ground exists for invoking the Federal jurisdiction. *Clark* v. *Smith*, 13 Pet. 195, 203; *In re Broderick's Will*, 21 Wall. 503, 520; *Holland* v. *Challen*, 110 U. S. 15, 24, 25; *Frost* v. *Spitley*, 121 U. S. 552, 557; *Gormley* v. *Clark*, 134 U. S. 338, 348; *Lawson* v. *United*

[2]Section 858 of Consolidated Statutes of North Carolina provides: "No injunction may be granted by any court or judge to restrain the collection of any tax or any part thereof, or to restrain the sale of any property for the non payment of any tax, unless such tax or the part thereof enjoined is levied or assessed for an illegal or unauthorized purpose, or the tax assessment is illegal or invalid."

[3]See also Bond *v.* Tarboro, 193 N. C. 248; Hunt *v.* Cooper, 194 N. C. 265; Southern Railway Company *v.* Cherokee County, 195 N. C. 756.

States Mining Company, 207 U. S. 1, 9; *Pusey & Jones Company* v. *Hanssen*, 261 U. S. 491, 498. But the enforcement in the Federal courts of new equitable rights created by States is subject to the qualification that such enforcement must not impair any right conferred, or conflict with any inhibition imposed, by the Constitution or laws of the United States. This Court said in *Scott* v. *Neely*, 140 U. S. 106, 110, that "whenever, respecting any right violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional right to a trial by jury, but because of the prohibition of the act of Congress to pursue his remedy in such cases in a court of equity." *Whitehead* v. *Shattuck*, 138 U. S. 146, 152; *Wehrman* v. *Conklin*, 155 U. S. 314, 323. Whatever uncertainty may have arisen because of expressions which did not fully accord with the rule as thus stated,[4] the distinction, with respect to the effect of state legislation, has come to be clearly established between substantive and remedial rights. A state statute of a mere remedial character, such as that which the petitioner invokes, can not enlarge the right to proceed in a Federal court sitting in equity, and the Federal court may, therefore, be obliged to deny an equitable remedy which the plaintiff might have had in a state court. *Pusey & Jones* v. *Hanssen, supra.*

The provision of the act of Congress does not extend to the jurisdiction of the Federal court, but governs the proceedings in equity and, unless the case is one where the objection may be treated as waived by the party entitled to raise it, the prohibition is not to be disregarded. *Reynes* v. *Dumont*, 130 U. S. 354, 395; *Singer Sewing Machine Company* v. *Benedict*, 229 U. S. 481, 484; *American Mills Company* v. *American Surety Company*, 260 U. S. 360, 363. There was no waiver in the present case and, as the petitioner had an adequate remedy at law, the District Court could not properly entertain the suit.

Decree affirmed without prejudice to proceedings at law.

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[4]See Cummings *v.* National Bank, 101 U. S. 153, 157; Greeley *v.* Lowe, 155 U. S. 58, 75; Cowley *v.* Northern Pacific Railroad Company, 159 U. S. 569, 582; Grether *v.* Wright, 75 Fed. 742.